

From: Walker, George

Date Sent: 9/17/99 10:58:57 AM

To: Fitt, Lawton W; Cobrinik, Zachariah;

Cc: Cohen, Larry; Dubno, Michael; Clough, Brent; Rubinstein, Stuart (GSAM);

Bcc:

Subject: FW: Ideas for ECM Internet Project

Number of Attachments: 0

Folder: Inbox

Message Text:

fyi

-----Original Message-----

From: Dechman, David

Sent: Friday, September 17, 1999 9:22 AM

To: Lewis, Jeremy

Cc: Tortora, Leslie C; Walker, George

Subject: Ideas for ECM Internet Project

Jeremy,

Thanks for the update on your project to enhance ECM methods of price discovery and predicting aftermarket performance of IPOs via capturing information from internet retail. You asked for comments on the draft note:

The possible solution in the draft note describes a possible e-bracket for ECM deals composed of various e-brokers who would give us information flow in return for access to our deals. There are three issues which might be interesting to consider:

1. The hot deals are obviously a currency, which can be used to please institutions, please high net worth individuals, acquire new customers (perhaps for GS.com), help ECM as per the memo, etc. How should we allocate between the various Firm businesses to maximize value to GS?
2. How much "say" do the issuers have? They have an obvious trade-off between a big "pop" (great media coverage and morale boost) versus more cash proceeds. Could we offer a "dial" to issuers and let them (and perhaps their Ad agencies) decide?
3. For GS.com, EXCLUSIVE access to GS hot deals might be a critical competitive tool to keep customer acquisition costs low and encourage larger clients to move to our site from a competitor's.

Hope this is helpful. Please keep me informed as the work progresses.

David A Dechman
212-902-0146

From: Steel, Robert Date Sent: 6/12/00 9:51:31 AM
To: 'tim_ferguson@putnaminv.com' (tim_ferguson@putnaminv.com);
Cc:
Bcc: Solomon, David M; mortara, mike; Schwartz, Eric S; Sanders, Michael J; Morris, Robert B;
Subject: Follow up to Thursday's Meeting
Number of Attachments: 0 Folder: Sent Items
Message Text:

Dear Tim:

It was good to see you in New York on Thursday. On behalf of all my colleagues, thanks to you and your team for taking the time to organize such a productive and informative briefing for us. I can assure you that we very much appreciate these efforts, and it will allow us to do a better job on focusing on what is important to you which accrues to your benefit quite directly.

With regard to specific follow up, I am pleased that David Solomon was there so as to further the relationship in high yield. You've continually mentioned this is an area where you feel as though we could do a better job, and I am optimistic that the progress that has been made is in large part due to David's involvement at our firm. We look forward to doing an even better job in this area going forward. As we discussed, the special projects research seems to be off to the races, and I am quite optimistic that Lisa and Carole will continue to build their relationship. On equity capital markets, I think is pretty clear that I am accepting your observations that we can and should do a better job with regard to IPO allocations. This is on my watch, and I can promise you I will do my best to make sure that we are responsive on this point. However, I would suggest that the advice I gave with regard to focus, i.e., the large and important significant transactions, is really the most important issue, not the smaller, highly appreciating tech-type IPOs, which are more of a transient nature, in my view, than of a long-term importance to your investing strategy.

One area which did raise some concerns with me and my colleagues was the feeling that in some way doing more underwriting business may actually impair our secondary business. I would recommend this is something that you continue to think about because, in my mind, there should be an additive aspect to access to the calendar as opposed to a zero sum game with regard to this type of activity. If anything, in the underwriting business, market shares continue to consolidate and the large two to three will have more and more business in the future, and it is my view that we should be rewarded with additional secondary business for offering access to capital markets product.

Tim, no message would be complete without thanking you again for all you have done to further the relationship between Goldman Sachs and Putnam. I am continually aware of your important role in insuring that we have been reviewed properly and am pleased that some of some of our areas have improved so as to make your faith in us appear justified to your colleagues. We will continue to do our best to contribute to your success in the future and look forward to continuing this constructive dialog.

Sincerely,

Bob Steel
Goldman, Sachs & Co.
(212) 902-8032

Confidential Treatment
Requested by
Goldman Sachs Group

GS 183154

From: /O=GOLDMAN, SACHS & CO./OU=WORLDWIDE/CN=RECIPIENTS/CN=ANNE.OBRIEN

Date Sent: 3/13/00 2:53:43 PM

To: Man, Margaret; Layne, Jeffrey;
Cc: Stevens, James; Miller, Jeffrey;
Bcc:
Subject: FW: joint books
Number of Attachments: 1
Message Text:

Folder: Deleted Items

any progress on this?

we have another big joint books deal today.

anything i can to help?

Anne O'Brien
New York Institutional Sales
212 902 2948

Email:
anne.obrien@gs.com
anneobrien@bellsouthips.com

-----Original Message-----

From: Obrien, Anne
Sent: Thursday, February 24, 2000 11:59 AM
To: Hodge, Tim; Man, Margaret
Cc: Taylor, Robert E.
Subject: joint books

the way that our salespeople look at underwriting info for clients is with this url. we run this report all the time for different clients/salespeople/reviews.

<http://nyispsw01.eq.gs.com/aims/aftermarket/cgi-bin/clientretrieve.cgi>

the salespeople will actually show this info to the client, and focus on the column that shows how much \$ the client made from the underwriting. it is a critically important tool.

however, when we looked at alliance recently, we noticed that the Corning Glass deal, which was joint books, did not appear for alliance. we manually added it in for bob taylor to review with alliance, in this spreadsheet. you will see that it has a big impact on the numbers.

we did notice, however, that it appeared for some of our clients, for example, Bowman and Chris Blair.

as we discussed, these joint books are occuring more frequently -- bob taylor mentioned Freemarkets, China.com, Allegiance, TMP and kerrr McGee in addition to corning. He has asked that we find a way to include these in the client aftermarket reports.

i'd love to go over this with both of you at your convenience.

From: /O=GOLDMAN, SACHS & CO./OU=WORLDWIDE/CN=RECIPIENTS/CN=MICHAEL LEMKE
Date Sent: 7/14/00 12:30:04 AM
To: Man, Margaret;
Cc: Miller, Jeffrey;Grinn, Brad;Rosenberg, Shira;
Bcc:
Subject: Aftermarket Performance Report
Number of Attachments: 0 Folder: Inbox
Message Text:

Margaret,

I have been asked to provide a detailed weekly analysis of JLF Asset Management's trade-up value to Joe Della Rosa, Tom Lewis and the salespeople who cover the account. I will be using the data provided in the Aftermarket Performance Report (by client) as the basis for this analysis. As follow-up to our conversation this afternoon, I would like to detail for you some of the issues that have arisen while examining JLF's data included in the Aftermarket Performance Report:

* Several deals JLF participated in are missing:

GS Lead Managed Deals: Organic, Inforte, Sonus Innovations, Capstone Turbine, Storage Networks, Rediff.com
GS Co-Lead (joint book running) Managed Deals: AT&T Wireless

Originally, we thought they might have been excluded because of Goldman's role in the underwriting of the deals or the type of account the shares were booked to (institutional or PCS). However, Goldman was the Lead Manager and Bookrunner for all but one of the missing deals. In addition, all the missing deals were booked to institutional accounts.

* There are duplicate entries for Sonic Innovations. We checked several other clients to see if this problem was isolated to JLF, but found duplicate Sonic Innovations entries in other accounts, as well.

* The title of the "Dates" column needs to be changed to clarify that these dates represent "Offering Dates," so as not to be possibly confused with "Trade Dates."

The Aftermarket Performance Report is an incredibly important source of data and is heavily relied upon by the US Shares salespeople. Please let me know how I can be of assistance in improving the data housed in the report.

Mike

GS 187580

From: Stevens, James

Date Sent: 2/2/00 6:25:23 AM

To: Furey, Timothy;

Cc: Frumkes, Robert K; Savini, Marc P; Heidt, Douglas; Auslander, Benjamin M; Miller, Rodney; Miller, Jeffrey; Bailon, Katherine; Shah, Aarjave; Colella, Mario; Lum, Jane; Man, Margaret; Layne, Jeffrey; Zabach, Christopher;

Bcc:

Subject: RE: Client Deal Leverage Ratio

Number of Attachments: 0

Folder: Inbox

Message Text:

I got a VM from Chris Zaback last night saying that Eq Mgmt had gone through this data for the Top 150 accounts across the division...this maybe a low enough level to get to the right comp...in addition, it sounds like Chris is trying to look at accounts that pay us on Jump Ball Co-Managed transactions as well -- although the work is just beginning.

-----Original Message-----

From: Furey, Timothy T

Sent: Tuesday, February 01, 2000 10:02 AM

To: Stevens, James F

Cc: Frumkes, Robert K; Savini, Marc P; Heidt, Douglas C; Auslander, Benjamin M; Miller, Rodney; Miller, Jeffrey S (Equities Management); Bailon, Katherine J; Shah, Aarjave; Colella, Mario; Lum, Jane; Man, Margaret; Layne, Jeffrey

Subject: RE: Client Deal Leverage Ratio

Jim,

Indeed <http://nyispsw01.eq.gs.com/aims/aftermarket/cgi-bin/clientform.cgi> is a helpful website and serves as a good reference if you're looking for a static view of a particular client's ECM history, but I think that the system falls short in allowing for a dynamic comparative study to generate any type of meaningful report.

I might be wrong, but I don't think that it provides a one year snapshot or ratio that is helpful to compare allocations across all clients to discover the following:

"who are we are tipping too much versus who could we tip some moreto generate more revenues".

Please advise me if there is a way to manipulate the data in this report to put together a more relevant look at the numbers.

Thanks for your response,

Tim

-----Original Message-----

From: Stevens, James F

Sent: Tuesday, February 01, 2000 8:53 AM

To: Furey, Timothy T; Frumkes, Robert K; Savini, Marc P; Heidt, Douglas C; Auslander, Benjamin M; Miller, Rodney; Miller, Jeffrey S (Equities Management); Bailon, Katherine J; Shah, Aarjave; Colella, Mario

Cc: Schwartz, Eric S; Niederauer, Duncan L; Taylor, Robert E; Stolz, Raymond S; Ongaro, Ronald M; Jaffee, Richard I; Lum, Jane; Man, Margaret; Layne, Jeffrey

Subject: RE: Client Deal Leverage Ratio

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Goldman Sachs Group

GS 193653

Proposed to be Sealed

Importance: High

Please be aware of the following website located on the "Equities -- Institutional Sales" web page -- it's called the "Underwriting History Report" and gives you a look at all deals that a particular account has participated in during the last two fiscal years -- in addition to providing the "trade up" value over particular time frames and two week/one month aftermarket Buys/Sells through GS.....

<http://nyispsw01.eq.gs.com/aims/aftermarket/cgi-bin/clientform.cgi>

Please contact your respective help desk to gain access....

Jim Stevens
Equity Capital Markets
Goldman, Sachs & Co.
One New York Plaza
50th Floor
New York, NY 10004

Tel: (212) 902-9517
Fax: (212) 346-4060
email: james.stevens@gs.com

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-----Original Message-----

From: Furey, Timothy T

Sent: Tuesday, February 01, 2000 8:08 AM

To: Frumkes, Robert K; Savini, Marc P; Heidt, Douglas C; Auslander, Benjamin M; Miller, Rodney; Miller, Jeffrey S (Equities Management); Bailon, Katherine J; Stevens, James F; Shah, Aarjave; Colella, Mario

Cc: Dellarosa, Joseph; Schwartz, Eric S; Lewis, Thomas B; Niederauer, Duncan L; Taylor, Robert E; Stolz, Raymond S; Ongaro, Ronald M; Jaffee, Richard I;

Bernstein, Stuart N; Kolitch, Jeffrey A

Subject: Client Deal Leverage Ratio

Confidential Treatment
Requested by
Goldman Sachs Group

GS 193654

Proposed to be Sealed

Has anyone commissioned a study to look at last years IPO deal leverage ratio for our clients?
[That is... how much money we are giving our clients versus what we are getting in return.]

The most popular method to discover "where we are getting the biggest bang for our buck" might be the following:

Profit to first trade/secondary (or us shares secondary revenues)

We've all talked about this subject at one time or another, I'm just wondering if anyone has figured out a simple way to do the calculation from our existing systems.

Any thoughts and/or suggestions would be appreciated.

Thanks,
Tim

Timothy Furey
Goldman, Sachs & Co.
(212) 902-9448
timothy.furey@gs.com

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From: Rosenberg, Shira
To: Furey, Timothy T;
Cc: Fagenson, Stephanie;
Bcc:

Date Sent: 1/27/00 10:00:55 AM

Subject: RE: McLagan Market Share for SpOT in Q1_99

Number of Attachments: 0

Folder: Sent Items

Message Text:

Tim,

Thanks for your helpful insights!

Shira

-----Original Message-----

From: Furey, Timothy T

Sent: Thursday, January 27, 2000 9:57 AM

To: Rosenberg, Shira

Subject: RE: McLagan Market Share for SpOT in Q1_99

No clue.

I'm a believer in first half and second half numbers, not quarterly numbers because of the volatility.

One reason that many firms pump up the volume in Q1 is that they believe that they will get better allocations from the deal houses if they pay up front for the year.

tim

-----Original Message-----

From: Rosenberg, Shira

Sent: Thursday, January 27, 2000 8:40 AM

To: Furey, Timothy T

Cc: Fagenson, Stephanie

Subject: McLagan Market Share for SpOT in Q1_99

Tim,

Ben asked Stephanie and I to follow-up with you regarding McLagan market share for SpOT in

Q1_99. In the meeting yesterday with Bob and Pat, Pat noticed that there was a "spike" in the Q1 and would like to understand why. I spoke with Rodney Miller regarding market share and he pointed out that a Quarter-over-Quarter basis might not necessarily be the way to look for a trend, but rather we should consider looking at year-over-year. He also pointed to soft dollars accounting, but we don't think this is an issue with the SpOT accounts. Ben thought we should inquire with you as to whether there were any big bulge deals where we gained secondary share, or if there could be any other reasons? Any suggestions you have will be greatly appreciated.

Thank you,

Furey 1/29

entail Treatment
requested by

GS 188404

Proposed to be Sealed

Goldman Sachs E-Mail

From: Fitt, Lawton W
Sent: Wednesday, May 19, 1999 9:21 AM
To: Bernstein, Jeffrey J; Paradis, Laura N; Loveday, James M; Lee, Jennifer A (Boston); Sanders, Michael J; Tenney, David H; Shiff, Daniel; Pettican, Kate; Gutman, Joseph D
Cc: Steel, Robert K; Greene, Kevin R; Koenke, Amy
Subject: Etoys

In an effort to be fair across the system, we would ask you to adhere to the following guidelines re: allocations to those who are not long term investors/aftermarket buyers (at prices not less than \$35 per share) in Etoys.

YTD secondary gross credits	\$5 million or more	not more than	20K shares
\$2 - 5MM	not more than	15K shares	
\$1 - 2 MM	not more than	10K shares	
\$0.5 - 1.0 MM	not more than	5K shares	
\$0.1 - 0.5MM	not more than	1K shares	
\$0.1 MM or less	not more than	0.5K shares	

Obviously the less we do with these accounts, the more we will have to give to those who really care about this deal, of whom there seem to be many!!

This should equate to about 20% of the Institutional stock going through these allocations (as opposed to the serious ones).

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GS/E 070328

From: Steel, Robert Date Sent: 4/7/00 3:54:19 PM
To: Lieberman, Mitchell J; Schwartz, Eric S; Lewis, Thomas B; Dallarosa, Joseph
Cc:
Sent:
Subject: RE: Zweig-DiMenna frustrated on deal allocations
Number of Attachments: 0 Folder: Sent Items
Message Text:

Tom and Joe....this is self-explanatory...the allusion to Aaron is especially
troubling. I think that we should tip the hell out of this account beginning
now. It is also not good that Karen is in the middle of this. Please keep me
very posted.

Bob

-----Original Message-----
From: Lieberman, Mitchell J
Sent: Thursday, April 06, 2000 10:47 AM
To: Schwartz, Eric S; Steel, Robert K
Cc: Masterson, John J
Subject: FW: Zweig-DiMenna frustrated on deal allocations

Another example of pressure from GSS clients linking GSS revenue to the
calendar. 1999 net profits were \$3.4MM.

-----Original Message-----
From: Zachem, Karen S
Sent: Thursday, April 06, 2000 9:56 AM
To: Hoidt, Douglas C; Katovitz, Kenneth J; Lewis, Thomas B; Ongaro,
Ronald M; Backer, Dean C; Lieberman, Mitchell J; Dallarosa, Joseph
Cc: Anido, Alexandra; Rodin, John
Subject: Zweig-DiMenna frustrated on deal allocations

Wanted to share the following e-mail I received from Joe DiMenna this
morning....just to keep you all in the loop on his frustration with deal
allocations and his threat to pull stock loan biz from us. I think the catalyst
for his comment was not any recent deal in particular...just frustration with
his recent performance in this market.

MS has walked him through the margins of stock loan...he is well aware of its
profitability.

-----Original Message-----
From: JDiMenna@Zweig-DiMenna.com (mailto:JDiMenna@Zweig-DiMenna.com)
Sent: Thursday, April 06, 2000 9:50 AM
To: Zachem, Karen S
Subject: RE: gps

and we get treated like shit on deals since aron gone.

remind the powers that be that we are enormously profitable acct given our stock
loan biz with you. if we dont get better treatment/calls/ deals etc...we will
have to rethink that.

Goldman Sachs E-Mail

From: Shiff, Daniel
Sent: Tuesday, May 18, 1999 2:08 PM
To: Koenske, Amy; Greene, Kevin R.
Subject: FW: ETOYS-Maters Capital

Daniel M. Shiff
Goldman, Sachs & Co.
One New York Plaza, 50th Floor, New York, New York 10004
Tel: 212-902-8397. Fax: 212-428-1943
email: daniel.shiff@gs.com

—Original Message—

From: Furey, Timothy T
Sent: Tuesday, May 18, 1999 12:15 PM
To: Shiff, Daniel
Cc: Shah, Aarjiva; Liberman, Aaron D; Mercy, Tod; Foster, Joella; Furey, Timothy; Pardo, Tara; Shropshire, Charlotte
Subject: ETOYS-Maters Capital

Masters Capital-Platinum Account-
Attended Big Hitters Breakfast

Bottom line:

Want to own at any price.

If they get 25,000 shares plus they will buy like amount in aftermarket at any price.

Additional trading of 1mm shares of unrelated stocks on the day of the pricing was also highlighted.

Regards,
Tim

Timothy Furey
Goldman, Sachs & Co.
(212) 902-9448
timothy.furey@gs.com

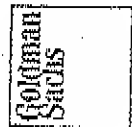
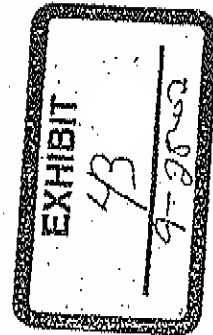
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Trade-Up Value:

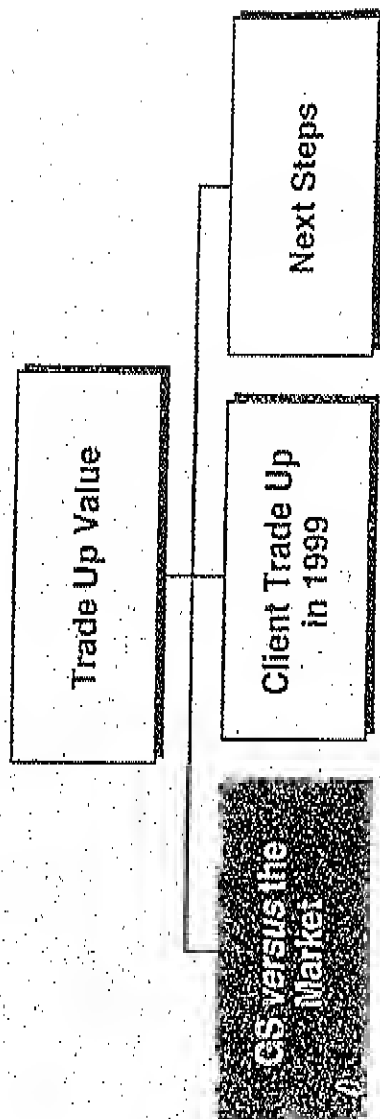
Deconstructing the Value Exchange in the Underwriting Business

April 25, 2000

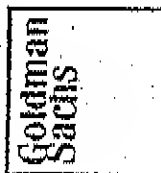


Roadmap

This brief presentation will cover three themes.

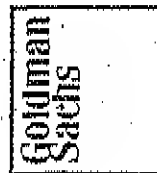


- The evolution of trade up value
- Where are we relative to the market?
 - Trade up value (\$)
 - Trade up per deal





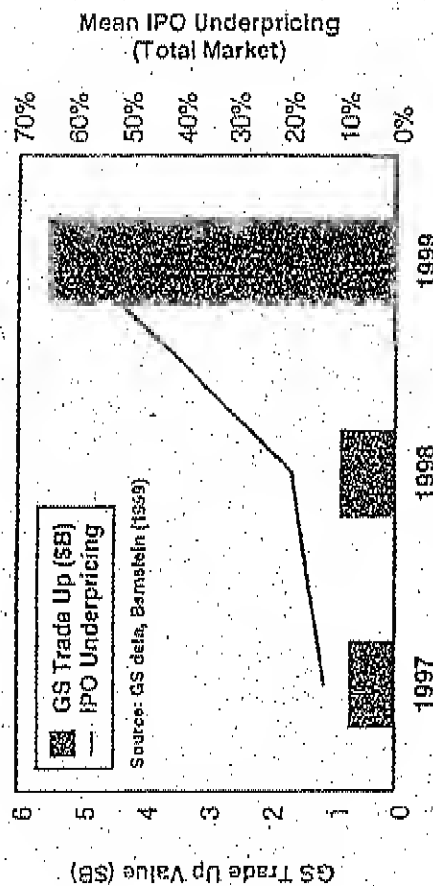
Trade up value exploded in 1999, for both GS and the market as a whole.



Trade-Up Perspective

- Steve Galbraith estimates that there were \$29+ billion in first day gains from IPOs in 1999 (\$11B from internet deals alone). In a number of instances, IPO allocations are adding hundreds if not thousands of basis points of performance for smaller funds. In light of this, Galbraith suspects deal allocations may have supplanted research in importance as part of the institutional commissions structure.

Source: Bernstein Research Call, 30 November (1999)



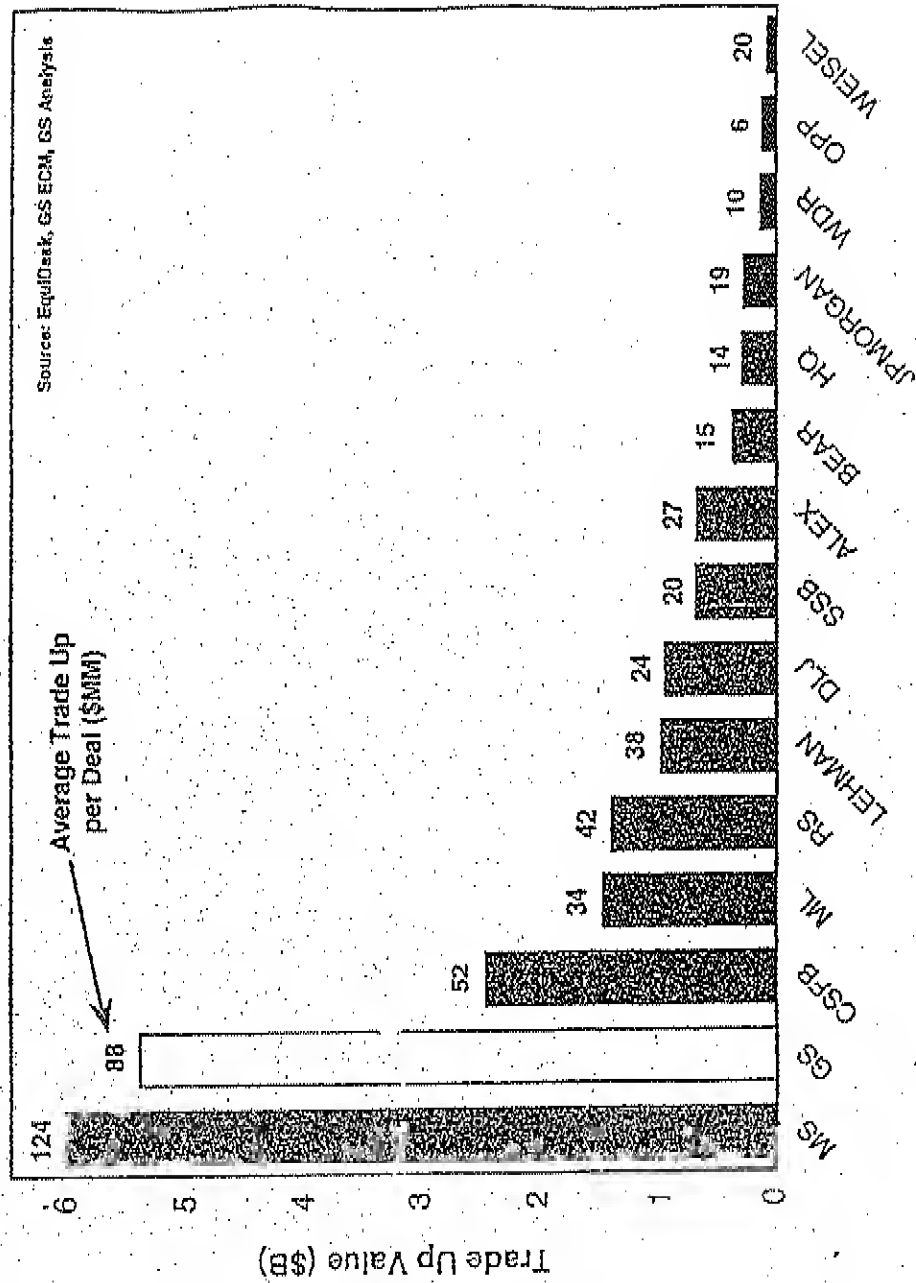
- Fidelity Investments, the Boston mutual-fund giant, routinely demands – and obtains – an allocation twice the size of the next-biggest allotment, according to the lists and Wall Street investment bankers.

Source: The Wall Street Journal, 27 January (2000)



GS versus the Global Market Trade Up Value

Goldman is
second in the
market by Trade
Up Value, as well
as by average
Trade Up Value
per deal.



GS 034293

Trade Up Value

Next Steps

Client Trade Up
in 1999

GS versus the
Market

- Understanding the "give-and-take" of underwritings
- Client analysis and trends



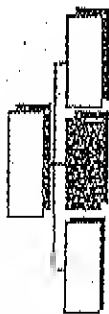


Rethinking Value Exchange in the Underwriting Business

*Changing the way
we measure a
client's value.*

- Historically we measured clients value by their secondary gross credits; primary gross credits were considered of lesser quality.
- We propose three important improvements to this:
 - 1) Measure clients by secondary gross credits and GSS revenues
 - Include GSS revenues along with secondary gross credits to measure the value of a client's flow business
 - 2) Measure clients by trade up value relative to flow business
 - 3) Breakdown underwriting participation into several components:
 - Trade up value where clients benefit from performance of GS underwritings
 - Cold deal participations
 - Jump ball designations - & Client aftermarket behavior

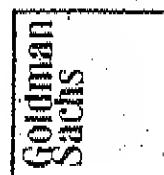




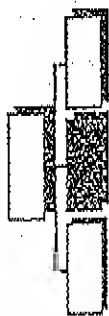
Measuring Clients by Secondary Gross Credits – an Historical Approach (\$MM)

*Historically we
measured a
client's value by
its secondary
commission flow.*

*A simple addition
to the analysis is
to look at how
trade-up value is
distributed.*



Client	Sec GC	GSS	NDR	Trade-Up Value	Trade-Up Ratio	TUV: Sec GC	TUV: NDR	Purchases %	Jump- Ball	After- Market Behavior
Janus	14.9			116		7.8				
ProIntech/ Jennison	14.5			50		3.4				
American Century	9.2			78		8.5				
Pequot	5.5			39		7.1				
Och-Ziff Cap. Mgmt.	2.2			9		4.1				
Farallon Cap. Mgmt.	1.0			2		2.9				



Adding GSS Revenues to Sec. Gross Credits Creates a More Comprehensive Picture of Client Value. (\$MM)

Consideration of GSS creates a more complete revenue picture and is highlighted by a change in trade-up value ratios

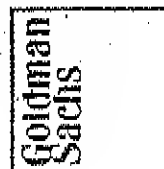
Goldman Sachs

Client	Sec. GC	GSS	Trade-Up Ratio	Trade-Up Ratios	TUV/Sec. GC	TUV/NDR	Purchases %	Jump-Fail	After Market Behavior
Janus		14.9				7.8			
Prudential/Jennison		14.5				3.4			
American Century		9.2				8.5			
Pequot		15.9				2.5			
Och-Ziff Cap. Mgmt.		11.7				.8			
Farallon Cap. Mgmt.		19.8				.1			



The Addition of Cold Deal Participation Further Develops the Client Value Picture (\$MM)

The best picture of how we should measure our clients not only includes non-deal revenues and TUV ratios, but also takes into consideration cold deal purchases, jump-ball allocations and aftermarket behavior.



Client	Sec. AC	GSS	NDR	Trade-Up Value	TUV: Sec. AC	Trade-Up Ratio	TUV: NDR	Purchases	% Jump-Ball	After-Market Behavior
Janus			14.9				7.8	819	67	TBD
Prudential/Jennison			14.5				3.4	262	81	TBD
American Century			9.2				8.5	72	35	TBD
Pequot			15.9				2.5	41	50	TBD
Och-Ziff Cap. Mgmt.			11.7				.8	14	42	TBD
Farallon Cap. Mgmt.			19.8				.1	0	0	TBD

Trade Up Value

Client Trade Up
in 1999

GS versus the
Market

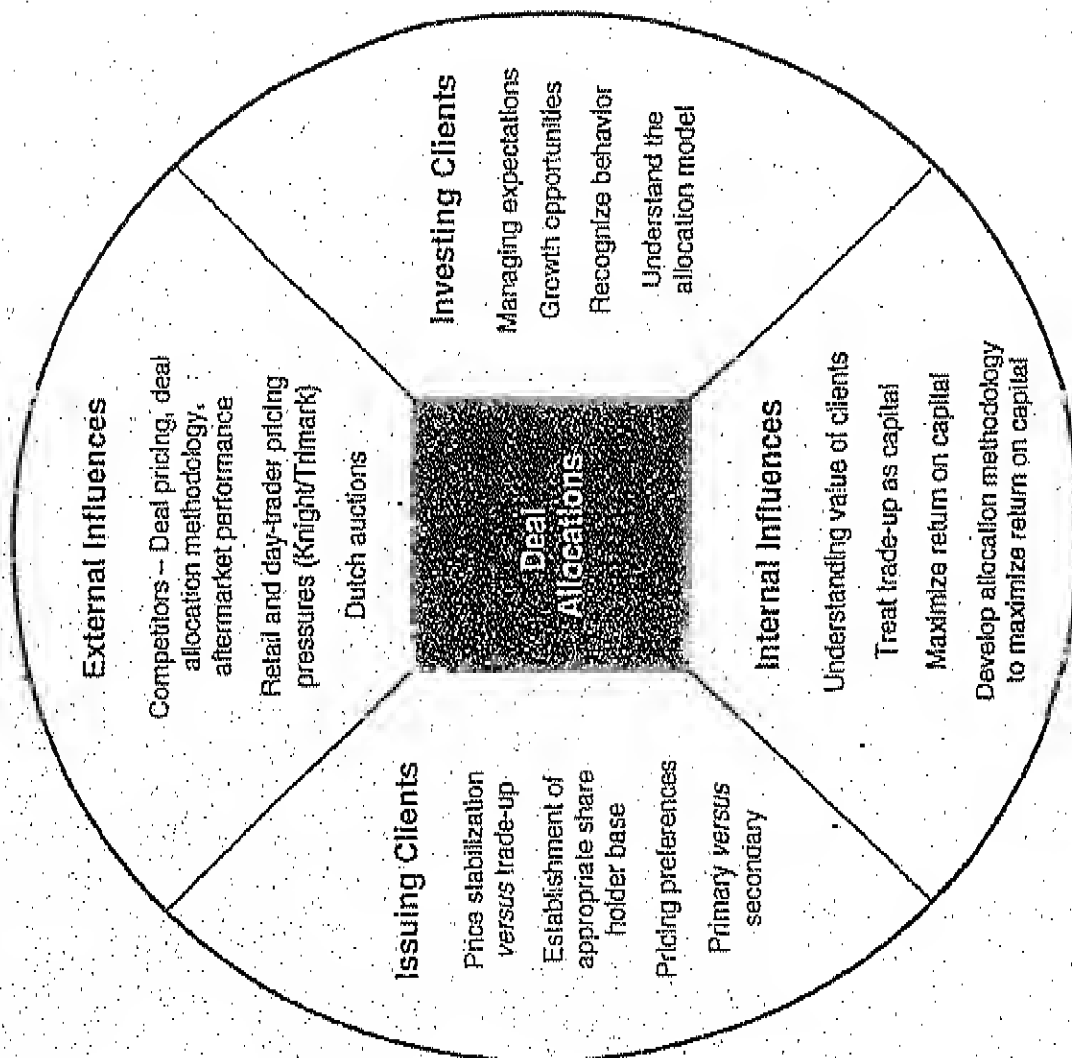
Next Steps

- Allocation determinants
- Extending the analysis & Data Automation
- What is next

Goldman
Sachs



Allocation Determinants



Initial analyses have focused on "Internal Influences" and our Investing Clients.

Keeping focused on our Issuing Clients should remain of primary importance.

Goldman Sachs



Next Steps

- Extending the Analysis & Data Automation
 - Jump-ball designations should be captured
 - Aftermarket behavior should be captured
 - Commercial potential of clients (account growth, market share gains, etc.)
 - SMART/GS-Online data capture
- What is Next
 - Internally, how to apply what we have learned
 - Short-term management opportunities



Presentation to

eToys

Regarding an
Initial Public Offering

January 18, 1999

GS/E

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GS/E 000510

Proposed to
Be Sealed

Executive Summary

■ The Goldman Sachs Team Will Make an eToys IPO a best seller

- Wall Street's Best, Most Experienced Internet Retail Team
- Top Ranked Internet and Retail Equity Research Teams
- Unsurpassed Sponsorship of the eToys Story
 - eToys will be our Marquee Internet Retail Client

- Commitment to eToys' Distribution Objectives
 - Long-term Relationship with eToys After its IPO
- eToys' Interests Will Always Come First

eToys

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Today's Agenda

- The Goldman Sachs eToys Team/Executive Summary
- Leading High Technology and Retail Banking Franchises
- The Market Environment for an eToys IPO
- Positioning the eToys IPO
- Valuing an eToys IPO
- Marketing the eToys IPO
- Supporting eToys in the Aftermarket
- How Goldman Sachs Will Make an eToys IPO Special

eToys

making an
IPO special

aftermarket
support

marketing
eToys

eToys
valuation

eToys story

introduction
to GS

summary

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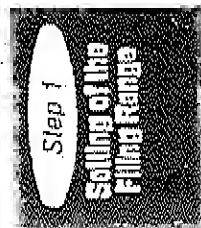
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IPO Pricing Dynamics and Considerations

Overview



- The initial IPO filing range is an important "hook" to attract the attention of leading institutional investors and cause them to give priority focus to the IPO (particularly important for large issuers in a busy new issue calendar)
- The mid-point of the range should represent an 10-15% discount to the expected fully distributed trading level
- Further clarity on the expected fully distributed trading level is garnered prior to pricing through focused discussions with the top institutional investors who have placed orders on the deal; buy-side insurance industry analyst feedback critically important

Considerations

Determination of Fully Distributed Value

- Fully distributed value is the anticipated "seasoned" trading value 1-3 months after the offering
- Prior to deal launch and setting the IPO range, fully distributed value estimated by considering the trading multiples of comparable companies
- A premium or discount may be applied to the trading multiple of the best comparables; important factors in determining this premium or discount include:
 - Relative growth rates (revenue and EPS)
 - Relative ROE
 - Management strength
 - Franchise strength
 - Float and trading liquidity
 - Presence or absence of take-over premium

Determination of the Size of the IPO Discount

- Equity market conditions and new issue environment
- Sentiment towards financial stocks in general and insurance stocks in particular in the case of demutualizations
- Extent of investor concerns with issuer
- Success of marketing plan and demand tension (supply/demand dynamics)
- Concerns regarding policyholder overhang and the structures in place to mitigate it
 - For demutualizations, the expected flow of policyholder shares will be a priority concern and will require an incentive for investors to compensate them for the price risk

Necessity of an IPO Discount

- Provides incentive for an investor to initiate a new and large position in a Company untested in the public markets
 - Absence of an IPO discount inherent in the filing range will strongly discourage large institutional investors from taking a meeting or placing an order in the deal
- Ensures aftermarket demand as leadership investors buy stock to reach critical mass in their funds
 - Demand matches or exceeds supply of shares sold in the immediate aftermarket and keeps stock above issue price, the key factor in the perception of a successful deal
- Motivates investors to accept the distribution risks inherent in an IPO
 - 32% of IPOs over \$500 million are trading below the offer price

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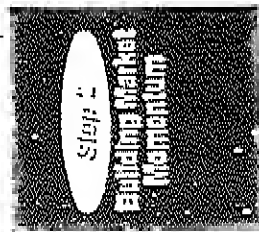
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IPO Pricing Dynamics and Considerations

Overview Continued



- Roadshow goal is to build market momentum from the launch leading up to the pricing
- Company story and IPO merchandizing strategy focused on delivering a clear, crisp and highly attractive message
- Management roadshow and underwriters' salesforces concentrate efforts on telling a compelling equity story, not on price (develop a "must own" sentiment around the issuer)
- Create a perception of scarcity by forcefully communicating messages to the market of deal strength and momentum
- Ultimate goal is to build a substantial book of orders for the IPO well in excess of the actual shares offered

Considerations

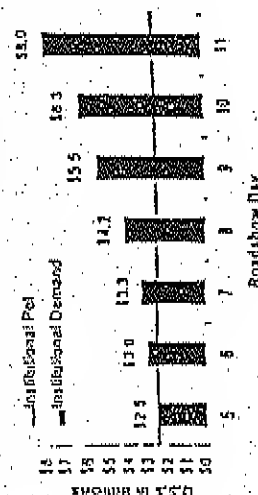
Definition of "Investorship Investors"

- Generally the top 25 institutional investors in the U.S.
- Average equity assets of \$100 billion
- \$20 billion of the life sector held by U.S. institutional investors
- Average large cap company position size of over \$1.5 billion
- Dedicated insurance sector research analysts
 - I.e. Erik Stern at Capital, Charles Choi at Fidelity, Jack Plym at Alliance
- Typical order size for deals >\$1,000 million is at least \$100-\$200 million

The Book-building Process

- Orders are taken by the bookrunner(s) over the course of the roadshow
- Investor has the option to put a price limit on the order; generally not the case in strong deals

Illustration of Institutional Bookbuilding



OverSubscription Levels of Large IPOs (b)

Issuer	Size (\$mm)	Over-Subscription
Conoco	\$4,403	4.0x
GS Group	3,657	10.0
Infiniti	3,182	6.0
Lucent	3,025	6.6
Allstate	2,417	3.3
Pepsi Bottling	2,300	2.0
Genentech	2,134	7.5
Associates First	1,943	6.4
Delight	1,700	1.1
Nabisco	1,268	3.6
Santa Fe	1,140	6.1
Heller	1,040	10.0
Gulfstream Aerospace	1,020	3.9
TDWaterhouse	1,009	4.6

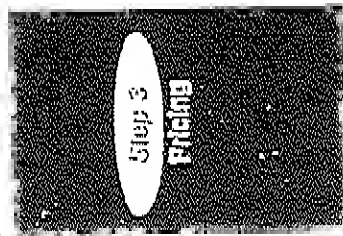
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IPO Pricing Dynamics and Considerations

Overview Continued



- Result of perception of scarcity and successful marketing should allow for a pricing at the top end of the range or, if possible, above the initial marketing range
- Range is narrowed, and potentially increased, based on feedback from the most important institutional investors in the book; buy-side industry analysts give bookrunner(s) their view on the expected fully distributed value; portfolio managers give indications of up to what price will they find the stock attractive to buy in the aftermarket
- Institutional investor feedback is collated and synthesized; judgement is made on final recommended IPO price
- Share allocations are made with an eye toward leaving institutions "hungry" to buy more stock in the aftermarket
- Ultimate goal is to capture maximum value while still ensuring stock price appreciation in the aftermarket (i.e. deal should be priced at a discount to the expected fully distributed value)

Considerations

IPO Pricing Precedents

1999-1999 YTD Non-Tech IPO Pricing Trends
(% of deals priced at the top end or above the initial range)



Analysis of Large IPOs

Issuer	Size (\$mm)	Implied IPO Discount at Filing (a)	% Change Offer Price vs. Mid-Pt.	Actual IPO Discount	Priced at the Top End of Range or Above
Conoco	\$4,403	15%	5%	10%	
Deutsche Telekom	4,301(b)	0	(3)	(3)	✓
GS Group	3,657	27	18	9	✓
Lucent Technologies	3,479	15	15	0	
Fox	2,808	12	0	12	✓
Allstate	2,417	13	6	7	✓
Pepsi Bottling	2,300	14	(6)	20	✓
Associates First Capital	2,234	13	9	4	
Delphi	1,700	16	6	10	
Nabisco	1,268	14	0	14	✓
Heller Financial	1,040	20	13	7	✓
TD Waterhouse	1,008	20	12	8	✓
Median		15%	6%	8%	

(a) Discount to expected fully distributed trading level based on the best comparables at the midpoint of the initial filing range
(b) U.S. Tranche

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<p>1 pretty damn intimidated. Don't forget; I was named</p> <p>2 as a coconspirator with your client and dragged in</p> <p>3 by the SEC, so I'm just -- you know, that was a</p> <p>4 tough day for me. That was a tough --</p> <p>5 Q. Excuse me.</p> <p>6 A. -- day for me.</p> <p>7 Q. Excuse me, Mr. Lenk. I move to strike</p> <p>8 that as unresponsive.</p> <p>9 Who named you as a coconspirator with</p> <p>10 Goldman Sachs?</p> <p>11 A. I was -- you know, the IPO litigation, the</p> <p>12 class action IPO litigation in New York, whatever</p> <p>13 state, I and my CFO were named as coconspirators</p> <p>14 based on alleged Goldman Sachs violations of the</p> <p>15 law, and I say alleged. I'm not a lawyer. I don't</p> <p>16 know the law. All I know is I was sued because I</p> <p>17 was in collusion with Goldman Sachs for doing</p> <p>18 manipulation, alleged, of IPO stock. So picture,</p> <p>19 yourself, I'm alone. I'm in an SEC thing. And I'm</p> <p>20 like, okay, the SEC is going to take me to jail and</p> <p>21 Goldman Sachs to jail. Think about it.</p> <p>22 Q. Okay, Sir --</p> <p>23 A. It can color your perceptions. I mean, it</p> <p>24 can. But anyway, I didn't recall it at the time. I</p> <p>25 recalled it subsequently. And you can be indignant</p>	<p>1 then we'll be through with all the stuff.</p> <p>2 MR. POSELL: Okay.</p> <p>3 MR. WARDEN: Q. Are you aware, by the way,</p> <p>4 the claim in the IPO actions you're referring to is one</p> <p>5 of overpricing?</p> <p>6 A. I don't recall all the specifics of the</p> <p>7 litigation.</p> <p>8 Q. All right. Did you ever know what the</p> <p>9 claim was in the litigation?</p> <p>10 A. I never reviewed the claim personally. I</p> <p>11 was fortunate enough to get some attorneys to take</p> <p>12 me on as a humble individual and help me through</p> <p>13 that.</p> <p>14 Q. Did they ever explain to you what the</p> <p>15 claim was?</p> <p>16 MR. POSELL: Objection. Calls for</p> <p>17 privilege. Don't answer.</p> <p>18 MR. WARDEN: Q. Did anyone ever explain to</p> <p>19 you what the claim was in the IPO litigation?</p> <p>20 MR. POSELL: Other than your lawyers. Do</p> <p>21 not answer what your lawyers told you.</p> <p>22 THE WITNESS: Other than my lawyers,</p> <p>23 nobody ever explained anything to me.</p> <p>24 MR. WARDEN: Q. Do you have any understanding</p> <p>25 of what the claim was in that litigation?</p>
Page 83	Page 85
<p>1 all you want. I'm giving you my testimony.</p> <p>2 Q. We'll come back. As far as -- well, never</p> <p>3 mind. Did the SEC ever accuse you of being a</p> <p>4 coconspirator of anyone?</p> <p>5 A. The SEC never told me anything. They</p> <p>6 dragged me in off the street, and they started</p> <p>7 drilling me with questions.</p> <p>8 Q. So you're comparing the SEC to the Gestapo</p> <p>9 or what, dragging in people off the street?</p> <p>10 MR. POSELL: Objection. I instruct him not</p> <p>11 to answer that, and if you want to -- if that's</p> <p>12 going to be the tenor of your questions Mr. Warden</p> <p>13 we can stop now.</p> <p>14 MR. WARDEN: He is the one who used the</p> <p>15 phrase drag him in off the street.</p> <p>16 MR. POSELL: You know what? He's a</p> <p>17 witness; you're the lawyer. You don't have to --</p> <p>18 you don't have to exaggerate or argue. You can just</p> <p>19 ask him questions.</p> <p>20 MR. WARDEN: And he can just answer, I</p> <p>21 think, as well.</p> <p>22 MR. WACHTEL: Do you want to do a break?</p> <p>23 MR. POSELL: Let's take a break because --</p> <p>24 all right. Go ahead.</p> <p>25 MR. WARDEN: Let me just finish this, and</p>	<p>1 A. I really don't believe I did.</p> <p>2 Q. Did you ever have such an understanding?</p> <p>3 A. I believe I had very limited, if any,</p> <p>4 understanding of that whole process.</p> <p>5 Q. All right. Let's go to --</p> <p>6 A. I'm thankful it's over.</p> <p>7 Q. Let's go to page 72 at line 5.</p> <p>8 MR. POSELL: Let me ask you, Mr. Warden,</p> <p>9 if this is going to take a little bit of time, I'd</p> <p>10 like to take a break and have us take a break.</p> <p>11 MR. WARDEN: That's all right. This is</p> <p>12 the last one of these, and we can take a break now</p> <p>13 or later. It's up to you.</p> <p>14 MR. POSELL: All right. Let's try it.</p> <p>15 MR. WARDEN: Q. Okay. 72, line 5 through 73,</p> <p>16 line 7.</p> <p>17 MR. POSELL: Line 7?</p> <p>18 MR. WARDEN: Yes.</p> <p>19 (Inserted text:</p> <p>20 "Q. And was there ever a discussion of</p> <p>21 bringing the price of the offering above \$20?</p> <p>22 "A. I don't recall that. From a tactical</p> <p>23 perspective, what the banks would tell us was they</p> <p>24 liked to price IPO's between ten and twenty dollars</p> <p>25 a share. They don't like to be below ten. They</p>

Page 86	Page 88
<p>1 don't like to be above twenty.</p> <p>2 "And, ideally, they want to be in that --</p> <p>3 and I don't know -- you know, I think it's sort of a</p> <p>4 practice in the marketplace. They like to have them</p> <p>5 priced between ten and twenty.</p> <p>6 "You know, at ten to twelve, and moving up</p> <p>7 to eighteen and twenty and then twenty, we were</p> <p>8 raising double proceeds we initially thought. We</p> <p>9 were very happy strategically as a company to be</p> <p>10 able to have that extra cash. I don't recall us</p> <p>11 ever talking about going up to the higher price.</p> <p>12 "Q. Yeah.</p> <p>13 "A. You know, as a -- well, I'll just say</p> <p>14 this. I know I'm talking too much. As a CEO, I was</p> <p>15 scared to death of just living up to the \$20 price.</p> <p>16 I was scared to death. We got to try to justify</p> <p>17 valuing the company.</p> <p>18 "There's only one thing worse than falling</p> <p>19 after the first day spike, it's falling below the</p> <p>20 IPO price. So how am I going to manage this company</p> <p>21 to be worth \$2.4 billion, which was the \$20 price.</p> <p>22 "If we had talked about going higher, I</p> <p>23 would have said, No -- I would have opposed that</p> <p>24 because I was already scared as it was."</p> <p>25 THE WITNESS: Complete.</p>	<p>1 A. Line 22 of page -- I'm sorry. I lost you.</p> <p>2 Sorry. Say it again.</p> <p>3 Q. Page 72, line 22.</p> <p>4 A. 72, line 22.</p> <p>5 Q. This is within the piece you just read.</p> <p>6 You said the following beginning there, "You know,</p> <p>7 as a -- well, I'll just say this -- I know I'm</p> <p>8 talking too much. As a CEO I was scared to death of</p> <p>9 just living up to the \$20 price. I was scared to</p> <p>10 death. We got to try to justify valuing the</p> <p>11 company." Now, that is a truthful statement, is it</p> <p>12 not?</p> <p>13 A. I was scared to death, yes.</p> <p>14 Q. Okay.</p> <p>15 A. You would have been, too.</p> <p>16 Q. Right. And nothing has changed since</p> <p>17 January 9, 2002, or for that matter since the IPO</p> <p>18 itself about whether you were scared or not, has it?</p> <p>19 A. Oh, no. I was scared.</p> <p>20 Q. Okay.</p> <p>21 A. Yeah.</p> <p>22 Q. Well, let's go to 73, line 1.</p> <p>23 A. Okay.</p> <p>24 Q. "There's only one thing worse --" you say,</p> <p>25 "There's only one thing worse than falling after the</p>
Page 87	Page 89
<p>1 MR. WARDEN: Q. Is that accurate, that</p> <p>2 testimony?</p> <p>3 A. It is accurate in the context of which the</p> <p>4 question was asked and the context of the time and</p> <p>5 the frame of mind and the discussions we had as a</p> <p>6 company.</p> <p>7 Q. Have any of the facts about what you've</p> <p>8 testified on page 72, line 5 through 73, line 7</p> <p>9 changed since January 9, 2002?</p> <p>10 A. This --</p> <p>11 Q. Changed -- is your testimony historical?</p> <p>12 A. This question was about the pricing</p> <p>13 committee discussion we had. If my banks -- if our</p> <p>14 bank, that is -- I stand corrected -- had told me</p> <p>15 that, "Toby, the price is going to go up 4X anyway</p> <p>16 on day one. That's what it's going to do," when I</p> <p>17 made this answer in the context of that pricing</p> <p>18 committee, this answer would be different.</p> <p>19 Q. Okay. Now, on January --</p> <p>20 A. So this is accurate with respect to the</p> <p>21 fact that I did not have that information when this</p> <p>22 answer was provided to this question for that period</p> <p>23 of time.</p> <p>24 Q. Okay. Now, let's just go down to line 22</p> <p>25 on page 72 of Lenk 1.</p>	<p>1 first day's spike. It's falling below the IPO</p> <p>2 price. So how am I going to manage this company to</p> <p>3 be worth 2.4 billion, which was the \$20 price. If</p> <p>4 we had talked about going higher, I would have said</p> <p>5 no. I would have opposed that because I was already</p> <p>6 scared as it was." Now, was that statement truthful</p> <p>7 in 2002?</p> <p>8 A. This statement was truthful in 2002 with</p> <p>9 respect to answering the question --</p> <p>10 Q. Yes.</p> <p>11 A. -- which was about why we did not discuss</p> <p>12 taking the price up in the pricing committee</p> <p>13 meeting. It was completely truthful. But see,</p> <p>14 here's the thing: My viewpoint was the stock was</p> <p>15 going to go up because of the market conditions</p> <p>16 we've talked about and it was going to go up 30, 35,</p> <p>17 et cetera.</p> <p>18 But here's the thing: The stock went to</p> <p>19 79, and if I had known it was going to do that, I'm</p> <p>20 screwed either way. I've got to live up to 79, not</p> <p>21 35. I might as well get the proceeds for the</p> <p>22 benefit of my shareholders because I'm stuck with</p> <p>23 the problem either way. Nobody told me it was going</p> <p>24 to go to 4X. I didn't know it was 31 instead of ten</p> <p>25 to one, I would have asked for more proceeds.</p>

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<p>1 I did not have that information when this</p> <p>2 question was -- answer was provided to that question</p> <p>3 for that period of time at that pricing committee</p> <p>4 meeting, so that's my answer to you. It is</p> <p>5 absolutely important with respect to time and</p> <p>6 context when you look at this testimony.</p> <p>7 MR. POSELL: You've answered the question.</p> <p>8 MR. WARDEN: Q. Would you have been even more</p> <p>9 scared if the IPO price were 40?</p> <p>10 A. Sure. Yeah. Absolutely.</p> <p>11 MR. WARDEN: Okay. This is a good time</p> <p>12 for a break.</p> <p>13 MR. POSELL: Thank you.</p> <p>14 THE VIDEOGRAPHER: This marks the end of</p> <p>15 tape number one in the deposition of Edward C. Lenk.</p> <p>16 Going off the record, the time is 11:45.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: This marks the</p> <p>19 beginning of tape number two in the deposition of</p> <p>20 Edward C. Lenk. Back on the record. The time is</p> <p>21 12:02.</p> <p>22 MR. WARDEN: Thank you.</p> <p>23 Q. Could you please refer to what's been</p> <p>24 marked as Lenk Exhibit 4, Mr. Lenk?</p> <p>25 A. 4. Yes, sir.</p>	<p>1 it at the time. I'm not sure.</p> <p>2 Q. And Daniel Nova --</p> <p>3 A. Yes, sir.</p> <p>4 Q. -- what were his affiliations, if any, at</p> <p>5 the time?</p> <p>6 A. He was a venture capitalist.</p> <p>7 Q. And with whom was he associated?</p> <p>8 A. Highland Capital Partners.</p> <p>9 Q. And then we'll come back to this, but they</p> <p>10 had just bought some of your preferred stock; is</p> <p>11 that correct?</p> <p>12 A. They were -- Highland Capital, to my</p> <p>13 recollection, was a series B preferred and a series</p> <p>14 C preferred investor, so I think you're referring to</p> <p>15 series C, yes.</p> <p>16 Q. How long had he been on the board?</p> <p>17 A. He would have been on the board since his</p> <p>18 series B investment, and I'd have to go back and</p> <p>19 check when series B closed, and it would have been</p> <p>20 at that point in time. I don't recall specifically.</p> <p>21 But more than a month; I know that.</p> <p>22 Q. Well, I think the record shows that series</p> <p>23 C was in March 1999. Series B presumably was before</p> <p>24 that; is that correct?</p> <p>25 A. Yes, sir. He was on for longer than March</p>
Page 91	Page 93
<p>1 Q. Other than yourself it says the directors</p> <p>2 present were Peter Hart, Tony Hung and Daniel Nova.</p> <p>3 Who is Peter Hart?</p> <p>4 A. Peter Hart was a board member of eToys.</p> <p>5 Q. And what other affiliation does he have?</p> <p>6 MR. POSELL: You mean did he have?</p> <p>7 MR. WARDEN: Q. Did he have at that time?</p> <p>8 Yes, thank you.</p> <p>9 A. I don't believe at that time he was</p> <p>10 affiliated with a company or had a job. He was a</p> <p>11 retail technology executive for a rapidly growing</p> <p>12 retailer prior to him joining our board, and that</p> <p>13 retailer's name was Ross stores. We brought him on</p> <p>14 the board because he had gone through a rapid</p> <p>15 technology scale-up for a retailer. I think he had</p> <p>16 retired at the time, and I'm not sure he had an</p> <p>17 affiliation at the time.</p> <p>18 Q. Okay. What business or profession was</p> <p>19 Tony Hung in?</p> <p>20 A. Venture capital.</p> <p>21 Q. And with whom was he affiliated?</p> <p>22 A. A firm called DynaFund Ventures. Yeah.</p> <p>23 Q. Had he had experience with other IPO's</p> <p>24 before the eToys IPO?</p> <p>25 A. I -- I don't recall at the time if he had</p>	<p>1 of '99. Yes, sir.</p> <p>2 Q. Okay. Was he on from sometime in 1998?</p> <p>3 A. He was on sometime in 1998 from the series</p> <p>4 B closing onward, and I just don't recall exactly</p> <p>5 which month it was.</p> <p>6 Q. Were there other members of the board who</p> <p>7 weren't present at this meeting on May 17?</p> <p>8 A. May 17. The notes indicate Peter Hart,</p> <p>9 Tony Hung, myself and Daniel Nova, so the board</p> <p>10 member that would be missing, then, from this list</p> <p>11 would be Michael Moritz, and my recollection is that</p> <p>12 would be the only missing board member from these --</p> <p>13 from this list here.</p> <p>14 Q. Okay. And what was Mr. Moritz' business</p> <p>15 or professional affiliation, if any?</p> <p>16 A. Venture capitalist.</p> <p>17 Q. And with what organization?</p> <p>18 A. Sequoia Capital.</p> <p>19 Q. How long had he been on the board?</p> <p>20 A. The same amount of time as Mr. Nova.</p> <p>21 Since the closing of the series B investment, so</p> <p>22 sometime from 1998 into this period in 1999 and then</p> <p>23 subsequent, of course.</p> <p>24 Q. Okay. Who was and is Frank Han, if I've</p> <p>25 pronounced that correctly?</p>

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<p>1 I'll certainly represent to you -- and he can 2 confirm to you -- that certainly I was there as 3 eToys' counsel, but ask him if you will.</p> <p>4 MR. POSELL: I don't have an objection.</p> <p>5 THE WITNESS: So is there a question to 6 me?</p> <p>7 MR. WARDEN: Not any longer. Thank you.</p> <p>8 MR. POSELL: Our new witness just 9 testified.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. WARDEN: Q. Do you recall at the end of 12 -- the last third, let's say, of your SEC deposition the 13 lawyer for the SEC conducting that deposition asked you 14 certain hypotheticals about kickbacks, commissions and 15 so on?</p> <p>16 A. I think I recall that from the script, 17 yes.</p> <p>18 Q. Thank you.</p> <p>19 A. Yeah.</p> <p>20 Q. And you --</p> <p>21 A. I think that's accurate, yes.</p> <p>22 Q. Has anyone ever told you since that 23 deposition that the SEC either proposed to charge or 24 did charge GS, Goldman Sachs, with taking kickbacks 25 from IPO customers?</p>	<p>1 Sachs as the lead managing underwriter for the eToys 2 IPO?</p> <p>3 A. Yes, I think that's accurate.</p> <p>4 Q. Were any of the IPO allegations that -- 5 allocations that you received as a personal 6 customers of Goldman Sachs a quid pro quo for your 7 directing eToys' investment banking business to 8 Goldman Sachs?</p> <p>9 A. No.</p> <p>10 Q. Do you have any information with respect 11 to Goldman Sachs having received kickbacks from 12 anyone in connection with the eToys IPO?</p> <p>13 A. I don't have any such information 14 personally, no.</p> <p>15 MR. WARDEN: I would like to mark as Lenk 16 19 a document that says -- which begins, "Goldman 17 Sachs Flip Reports, Deal: EToys, Inc." It bears a 18 printout number of September 19th, 2001; otherwise, 19 is undated.</p> <p>20 (Whereupon, Exhibit No. 19 was marked for 21 identification.)</p> <p>22 MR. WARDEN: Q. Mr. Lenk, is Lenk Exhibit 19 23 the flipping list or flipping document to which you 24 referred in your testimony this morning when you said 25 you had seen something since the SEC deposition?</p>
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<p>1 A. Nobody has told me anything about any 2 litigation.</p> <p>3 MR. POSELL: Is the answer no?</p> <p>4 THE WITNESS: No.</p> <p>5 MR. POSELL: Thank you.</p> <p>6 THE WITNESS: Sorry. I've got to be 7 quick. Sorry. Direct. No.</p> <p>8 MR. WARDEN: Q. Has anyone told you that the 9 SEC did not charge Goldman Sachs with making IPO 10 allocations contingent on a customer's expression of 11 after-market interest?</p> <p>12 A. No.</p> <p>13 Q. You became at one point a personal 14 customer of Goldman Sachs, did you not, Mr. Lenk?</p> <p>15 A. Yes.</p> <p>16 Q. And as such you received allocations in 17 some IPO's that Goldman Sachs managed?</p> <p>18 A. Yes.</p> <p>19 Q. The first such allocation you received was 20 in Goldman Sachs' own IPO, was it not?</p> <p>21 A. Yes, it -- that's correct.</p> <p>22 Q. And that was shortly before the eToys IPO?</p> <p>23 A. No, my recollection was it was after.</p> <p>24 Q. After, okay. And therefore it certainly 25 was after and long after you had selected Goldman</p>	<p>1 A. Yes.</p> <p>2 Q. And you don't know who created this, do 3 you?</p> <p>4 A. No.</p> <p>5 Q. And you don't know when it was created?</p> <p>6 A. No.</p> <p>7 Q. All right. Leaving this flipping document 8 aside, what else have you seen or learned of since 9 your SEC deposition that bears on the pricing of 10 eToys' IPO, in your judgment?</p> <p>11 MR. POSELL: Could I have the question 12 again, Ms. Reporter.</p> <p>13 (Record read by the reporter.)</p> <p>14 MR. WACHTEL: Objection to the form.</p> <p>15 MR. POSELL: Objection as to form. You 16 can answer.</p> <p>17 THE WITNESS: What else have I seen since 18 the SEC deposition?</p> <p>19 MR. WARDEN: Q. Yes.</p> <p>20 A. And you're not asking what else I 21 reflected upon or anything. I -- I have seen -- my 22 attorney has showed me some material as part of this 23 litigation that is additional information I've seen.</p> <p>24 Q. That in some way --</p> <p>25 A. Well --</p>

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<p>1 Q. -- changes --</p> <p>2 A. I'm sorry. I apologize. Your question</p> <p>3 was with respect to the pricing --</p> <p>4 Q. Pricing.</p> <p>5 A. -- of the IPO?</p> <p>6 Q. That's correct.</p> <p>7 A. It's very specifically and narrowly with</p> <p>8 respect to the pricing of the --</p> <p>9 Q. Yes.</p> <p>10 A. -- IPO? I've seen some material with</p> <p>11 respect to this litigation in terms of the arguments</p> <p>12 with Goldman Sachs in terms of their</p> <p>13 responsibilities vis-a-vis eToys, which would lead</p> <p>14 me to question whether our interests are being</p> <p>15 served with respect to that pricing.</p> <p>16 For example, there was a question of</p> <p>17 whether Goldman Sachs has a legal fiduciary</p> <p>18 obligation to the company or not, and they're</p> <p>19 asserting that they do not, which leads me to</p> <p>20 believe that I really should have been a little more</p> <p>21 vigilant as a CEO of the company at the time in</p> <p>22 terms of pricing. So that would be the only</p> <p>23 additional thing that pops into my mind.</p> <p>24 Q. When you were working on the IPO and in</p> <p>25 particular on the pricing, were you thinking of</p>	<p>1 A. Okay.</p> <p>2 Q. -- is that right?</p> <p>3 A. No, no. There's this and other additional</p> <p>4 information with respect to Goldman Sachs' arguments</p> <p>5 with respect to this case.</p> <p>6 Q. All right. I was going to come to that.</p> <p>7 You saw this --</p> <p>8 A. Yes.</p> <p>9 Q. You've seen written arguments by Goldman</p> <p>10 Sachs; is that right?</p> <p>11 A. Some such, yes. Some --</p> <p>12 Q. And you've seen Exhibit 19. Now, what</p> <p>13 else have you come to see or learn of since your SEC</p> <p>14 deposition that affects your view of the pricing of</p> <p>15 the eToys' IPO?</p> <p>16 A. That's the two major things I've seen.</p> <p>17 Q. As you sit here today, do you believe that</p> <p>18 Lawton Fitt set out to cheat you in some fashion or</p> <p>19 cheat eToys in some fashion?</p> <p>20 A. Lawton Fitt personally?</p> <p>21 Q. Yes.</p> <p>22 A. Personally?</p> <p>23 Q. Yes.</p> <p>24 A. Lawton Fitt personally.</p> <p>25 Q. That's my question.</p>
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<p>1 Goldman Sachs as your fiduciary?</p> <p>2 A. I was thinking that they were working for</p> <p>3 us.</p> <p>4 Q. Okay.</p> <p>5 A. Yeah, I was.</p> <p>6 Q. Fine. Do you think about fiduciaries as</p> <p>7 you conduct business?</p> <p>8 A. I don't know what the legal definition of</p> <p>9 fiduciary is, but in my mind they were working for</p> <p>10 me and my company. That was what I felt. That's</p> <p>11 what I thought. You know, that's how -- that's what</p> <p>12 I thought --</p> <p>13 Q. Does Goldman --</p> <p>14 A. -- at the time.</p> <p>15 Q. Excuse me. Does Goldman Sachs disclaimer</p> <p>16 of a fiduciary duty mean to you that they didn't</p> <p>17 think they were working in your interest?</p> <p>18 MR. WACHTEL: Objection to form.</p> <p>19 THE WITNESS: I'm just -- I've told you</p> <p>20 how -- my view -- I've told you I saw additional</p> <p>21 information which leads me to question --</p> <p>22 MR. WARDEN: Q. Okay.</p> <p>23 A. -- the pricing.</p> <p>24 Q. The additional information is Exhibit</p> <p>25 19 --</p>	<p>1 A. I have -- I have no basis to have any</p> <p>2 personal feelings about an individual at the firm of</p> <p>3 Goldman Sachs, so the answer is -- I don't know how</p> <p>4 to answer your question.</p> <p>5 Q. Do you have any --</p> <p>6 A. Lawton Fitt for Goldman Sachs. She didn't</p> <p>7 work for herself. She wasn't an individual.</p> <p>8 Q. Okay. Do you think -- as you sit here</p> <p>9 today, do you believe that Lawton Fitt set out to</p> <p>10 cheat eToys?</p> <p>11 A. Define cheat.</p> <p>12 Q. Well, I'll let you use it as you would</p> <p>13 normally use the word.</p> <p>14 A. I don't use the word.</p> <p>15 Q. Oh, you don't, okay. You don't ever use</p> <p>16 the word cheat?</p> <p>17 A. I can't recall the last time I used the</p> <p>18 word cheat, so you tell me what the definition of</p> <p>19 cheat is, please.</p> <p>20 Q. No, no. I'll ask -- I'll ask a question</p> <p>21 that uses a word that hopefully you do understand.</p> <p>22 A. Well, you're going to have to be more</p> <p>23 specific or it's going to be a long afternoon, I</p> <p>24 mean.</p> <p>25 MR. POSELL: Okay. All right. You've</p>

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<p>1 answered -- let him ask the question.</p> <p>2 MR. WARDEN: Q. As you sit here today, do you</p> <p>3 believe that Lawton Fitt set out to act in a morally</p> <p>4 wrong way to deprive eToys of advantages for the benefit</p> <p>5 of Goldman Sachs?</p> <p>6 A. I believe that Goldman Sachs did not serve</p> <p>7 the best interests of my company. I think they</p> <p>8 could have served our interests better during the</p> <p>9 IPO process.</p> <p>10 Q. Okay. Now, does Goldman --</p> <p>11 A. And Lawton --</p> <p>12 Q. Goldman Sachs -- go ahead. I'm sorry.</p> <p>13 A. And Lawton Fitt was part of the team at</p> <p>14 Goldman Sachs that I would allocate to that view</p> <p>15 that we could have been served better.</p> <p>16 Q. Okay. You could have been served better.</p> <p>17 A. Yes.</p> <p>18 Q. Do you think Lawton Fitt and other members</p> <p>19 of the team deliberately did not serve eToys better?</p> <p>20 A. I have no --</p> <p>21 MR. WACHTEL: Objection.</p> <p>22 THE WITNESS: -- ability to get inside the</p> <p>23 minds of another person to answer that question.</p> <p>24 How could I do that? I'm not a psychologist.</p> <p>25 MR. WARDEN: Q. I asked if you had any reason</p>	<p>1 everything. Now, if you define that as lying, then</p> <p>2 yes. If you don't define that as lying, then I</p> <p>3 don't know.</p> <p>4 Q. Let's suppose I define that as lying if,</p> <p>5 and only if, the speaker intentionally fails to tell</p> <p>6 -- tell something for the purpose of deceiving the</p> <p>7 hearer.</p> <p>8 MR. POSELL: This is getting a little bit</p> <p>9 complicated.</p> <p>10 MR. WARDEN: Well, you ask me about</p> <p>11 defining.</p> <p>12 MR. POSELL: Mr. Warden, you know, you're</p> <p>13 a fine lawyer. He's a CEO. Do you understand the</p> <p>14 question?</p> <p>15 THE WITNESS: Not really.</p> <p>16 MR. WARDEN: Q. You don't, okay.</p> <p>17 A. I'm trying to get your point.</p> <p>18 Q. Do you understand the word deceit?</p> <p>19 A. Deceit. I haven't looked up the</p> <p>20 dictionary definition of deceit. I think I'm trying</p> <p>21 to answer you as best I can. I believe that the</p> <p>22 firm and the individuals did not tell us everything</p> <p>23 that they should have, and I'll leave it to you and</p> <p>24 a judge in a court of law to tell me what word in</p> <p>25 the dictionary to ascribe to that. I'm not a legal</p>
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<p>1 to believe that; that's all.</p> <p>2 MR. POSELL: No, I think you asked him if</p> <p>3 he believed it. It's my computer.</p> <p>4 MR. WARDEN: I'll accept his answer.</p> <p>5 Well, I can see from the record that Lawton Fitt</p> <p>6 needs to be spelled for the reporter. It's</p> <p>7 L-a-w-t-o-n, new word F-i-t-t. That's the first and</p> <p>8 second name, so it should be capitalized.</p> <p>9 Q. Do you use the word crook as in "So-and-so</p> <p>10 is a crook"?</p> <p>11 A. Do I use it?</p> <p>12 Q. Yes.</p> <p>13 A. I can't recall the last time I used it.</p> <p>14 Q. What words do you have in your vocabulary</p> <p>15 that you might use to describe someone whom you</p> <p>16 might think is behaving dishonestly?</p> <p>17 A. I don't know. I haven't really thought</p> <p>18 about that.</p> <p>19 Q. Do you understand the word dishonest?</p> <p>20 A. Yeah, I would use the word liar to refer</p> <p>21 to dishonest, perhaps.</p> <p>22 Q. Do you believe that Lawton Fitt lied to</p> <p>23 you and eToys?</p> <p>24 A. Lied to us and eToys. I believe that</p> <p>25 Goldman Sachs and Lawton Fitt did not tell us</p>	<p>1 expert.</p> <p>2 Q. Okay.</p> <p>3 A. I'm not a language expert.</p> <p>4 Q. You do have a master's in business</p> <p>5 administration from the Harvard Business School; am</p> <p>6 I correct?</p> <p>7 A. Yeah.</p> <p>8 Q. Were you required to write literate papers</p> <p>9 in the English language in the course of earning --</p> <p>10 MR. POSELL: Objection. Badgering.</p> <p>11 MR. WARDEN: Q. -- that degree?</p> <p>12 MR. POSELL: This is not going to go very</p> <p>13 much farther, Mr. Warden.</p> <p>14 MR. WARDEN: No, it isn't. I agree.</p> <p>15 MR. POSELL: Yeah, because you're going to</p> <p>16 be talking to an empty chair if you keep that up.</p> <p>17 MR. WARDEN: I'm not sure the judge would</p> <p>18 appreciate that.</p> <p>19 MR. POSELL: I'm sure the judge would</p> <p>20 appreciate your approach to badgering a third-party</p> <p>21 witness.</p> <p>22 MR. WARDEN: A third-party witness. Oh, I</p> <p>23 thought I was dealing with the plaintiff's CEO. Is</p> <p>24 it your position that this witness is a third-party</p> <p>25 witness?</p>

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<p>1 MR. POSELL: You mean by Goldman Sachs or</p> <p>2 by anybody?</p> <p>3 MR. WACHTEL: Q. By anybody. Did you</p> <p>4 understand --</p> <p>5 A. Well, we were in what was referred to,</p> <p>6 from my recollection, as the quiet period, as I</p> <p>7 wasn't supposed to talk about anything to anybody.</p> <p>8 Q. Okay. Who told you about the quiet</p> <p>9 period?</p> <p>10 A. My staff and Goldman. I mean, it was very</p> <p>11 clearly impressed upon me that if I make a mistake</p> <p>12 and talk to the press or something, that I risk the</p> <p>13 IPO, so that -- that's one thing I recall.</p> <p>14 Q. And do you remember who at Goldman told</p> <p>15 you that?</p> <p>16 MR. WARDEN: Objection --</p> <p>17 THE WITNESS: I don't remember that.</p> <p>18 MR. WARDEN: -- to form.</p> <p>19 THE WITNESS: I don't remember who told me</p> <p>20 that specifically. I just remember that I was very</p> <p>21 clearly coached that we were in a quiet period and</p> <p>22 what that means and that I need to be very careful.</p> <p>23 MR. WACHTEL: Q. Did you -- were you ever</p> <p>24 told that one of the prospective -- withdrawn.</p> <p>25 Were you ever cautioned that -- withdrawn.</p>	<p>1 in the best interests of your company?</p> <p>2 A. No.</p> <p>3 Q. Did they ever tell you -- withdrawn.</p> <p>4 Did Goldman Sachs ever tell you during the</p> <p>5 course of the road show that something you had said</p> <p>6 in one of the pitches was inappropriate?</p> <p>7 A. I don't think so.</p> <p>8 Q. Did they ever say something like, "Don't</p> <p>9 ever say that again"?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Now, you said that from time to time,</p> <p>12 going into a meeting, you'd be given a little sheet</p> <p>13 or a memo describing who it was?</p> <p>14 A. No paper.</p> <p>15 Q. Excuse me?</p> <p>16 A. All verbal.</p> <p>17 Q. All verbal.</p> <p>18 A. All verbal. We would be given a paper</p> <p>19 with, "Here's the name, here's the address, here's</p> <p>20 the time, here's the city," but the coaching they</p> <p>21 gave us was all verbal, nothing on paper.</p> <p>22 Q. Did you inquire of Goldman about any</p> <p>23 prospective investors' participation in any prior</p> <p>24 IPO's handled by Goldman?</p> <p>25 A. I'm sorry. You have to repeat the</p>
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<p>1 Did any prospective investor ever tell you</p> <p>2 that they were a short-term holder?</p> <p>3 A. As a general rule, the investors didn't</p> <p>4 tell me anything. They didn't -- they didn't tell</p> <p>5 us directly anything.</p> <p>6 Q. Did Goldman Sachs ever tell you that a</p> <p>7 prospective investor was a short-term holder?</p> <p>8 A. Not to my recollection.</p> <p>9 Q. Did Goldman Sachs tell you that -- did</p> <p>10 Goldman Sachs ever tell you that a prospective</p> <p>11 investor was a flipper?</p> <p>12 A. No.</p> <p>13 Q. Did it matter to you whether a prospective</p> <p>14 investor was a short-term holder versus a long-term</p> <p>15 holder?</p> <p>16 MR. WARDEN: Objection to form.</p> <p>17 THE WITNESS: It mattered to us. We had a</p> <p>18 strong preference for, you know, long-term, stable</p> <p>19 stock ownership from these institutional clients of</p> <p>20 theirs.</p> <p>21 MR. WACHTEL: Q. Do you have a clear</p> <p>22 recollection of having shared that desire with Goldman</p> <p>23 representatives?</p> <p>24 A. Yes.</p> <p>25 Q. Did they ever tell you that that was not</p>	<p>1 question.</p> <p>2 MR. POSELL: Could you say it --</p> <p>3 MR. WACHTEL: Q. Did you say to somebody</p> <p>4 about an investor, "What did Fidelity do on the last</p> <p>5 deal," for example?</p> <p>6 A. I don't recall us getting that kind of</p> <p>7 information from Goldman, and I don't recall whether</p> <p>8 we -- whether we asked. We definitely asked</p> <p>9 consistently about, Are these guys going to be -- A,</p> <p>10 are they going to buy in the IPO, you know? Will</p> <p>11 they -- and whether will they, will they -- are they</p> <p>12 going to buy a lot and are they going to hold</p> <p>13 through the long-term?</p> <p>14 Q. Did you ever inquire as to whether a</p> <p>15 prospective investor would be there in the</p> <p>16 after-market supporting the stock?</p> <p>17 A. Our line of inquiry was more about "Will</p> <p>18 these guys be holders of us, investors with us for</p> <p>19 the long-term?" And for me that's a form of</p> <p>20 after-market support.</p> <p>21 Q. Did anyone from Goldman Sachs during the</p> <p>22 course of the road show tell you that they thought a</p> <p>23 prospective investor would be buying more shares in</p> <p>24 the after-market?</p> <p>25 A. I don't recall them telling us that.</p>

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<p>1 MR. POSELL: You did say you, but I, like</p> <p>2 Mr. Warden, believed that it was the plural you as</p> <p>3 opposed to the singular you.</p> <p>4 MR. WACHTEL: Fine. I apologize. Let me</p> <p>5 ask it again.</p> <p>6 Q. Mr. Lank, did you personally make the</p> <p>7 decision -- I'll try it differently. You voted on</p> <p>8 May 17th to move the range of the IPO up to 18 to</p> <p>9 20, did you not?</p> <p>10 A. As the CEO and a member of the board of</p> <p>11 directors, yes, I did.</p> <p>12 Q. Okay. On what were you relying in making</p> <p>13 that decision?</p> <p>14 A. I relied in my vote very heavily on the</p> <p>15 advice and input of Goldman Sachs.</p> <p>16 Q. And do you remember having a discussion</p> <p>17 with any of your fellow board members at that time</p> <p>18 concerning -- withdrawn.</p> <p>19 Do you remember having a discussion with</p> <p>20 your fellow board members at that time?</p> <p>21 A. Yeah, I believe we did discuss this in</p> <p>22 detail --</p> <p>23 Q. Do --</p> <p>24 A. -- in some detail.</p> <p>25 Q. Do you remember anyone telling you that</p>	<p>1 20. The 17th we holed ourselves in to 18 to 20, and</p> <p>2 then on the 19th we said, "Is it 18, 19 or 20?" And</p> <p>3 we made the 20 decision. That's what I think</p> <p>4 happened as I try to cut back through all the</p> <p>5 history.</p> <p>6 Q. Okay. At any time prior to the board</p> <p>7 voting on May 19th, 1999, did Goldman Sachs tell you</p> <p>8 that it was allocating the shares of Effays to known</p> <p>9ippers, yes or no?</p> <p>10 A. No.</p> <p>11 Q. Did they tell you they were allocating the</p> <p>12 shares of your company to spincees?</p> <p>13 MR. POSELL: What?</p> <p>14 MR. WARDEN: Did they tell you yes or no.</p> <p>15 THE WITNESS: They -- no, they did not say</p> <p>16 they were allocating shares to something called</p> <p>17 spincees.</p> <p>18 MR. WACHTEL: Q. Do you know what a spincee</p> <p>19 is?</p> <p>20 A. I'm not sure I know what a spincee is, no.</p> <p>21 Q. Okay. Did they tell you they were</p> <p>22 allocating your shares to business people who they</p> <p>23 hoped would in turn give them other sorts of</p> <p>24 business in the future?</p> <p>25 A. No, they did not tell us that.</p>
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<p>1 they too were relying on the advice of Goldman Sachs</p> <p>2 in voting of favor of moving the price up?</p> <p>3 MR. WARDEN: Objection.</p> <p>4 THE WITNESS: I don't recall them saying</p> <p>5 that specifically.</p> <p>6 MR. WACHTEL: Q. Did anyone tell you --</p> <p>7 A. But here's the thing. Let me just say I</p> <p>8 believe the entire board of directors relied very</p> <p>9 heavily on the input and advice of Goldman Sachs</p> <p>10 with respect to moving that price up. That's my</p> <p>11 belief.</p> <p>12 Q. Do you know anything else they were</p> <p>13 relying on?</p> <p>14 A. That was the -- that was the primary data</p> <p>15 input with which the board of directors approved</p> <p>16 that decision on that day. So the answer is --</p> <p>17 Q. Was there --</p> <p>18 A. -- no.</p> <p>19 Q. And on May 19th, 1999, Lawton Fitt again</p> <p>20 advised the board about the pricing of the IPO,</p> <p>21 correct?</p> <p>22 A. Yeah, and again, since it's very hard to</p> <p>23 remember all the specifics, my recollection I'm --</p> <p>24 I'm thinking that what happened on the 19th was we</p> <p>25 picked the specific price within the range of 18 to</p>	<p>1 Q. Okay. Did Goldman Sachs tell you at any</p> <p>2 time prior to the vote of the pricing committee on</p> <p>3 May 19th, 1999, that they were tracking the first</p> <p>4 made profits derived by institutional investors who</p> <p>5 had been allocated shares in prior IPOs managed by</p> <p>6 Goldman Sachs?</p> <p>7 A. No, they did not.</p> <p>8 Q. Did you ever hear the term trade-up value</p> <p>9 prior to May 19th, 1999?</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you -- anyone at Goldman Sachs tell</p> <p>12 you that they -- withdrawn.</p> <p>13 Did anyone at Goldman Sachs tell you they</p> <p>14 were engaged in a T-plus-one analysis? Withdrawn.</p> <p>15 Do you know what T-plus-one analysis is?</p> <p>16 A. No, I do not.</p> <p>17 Q. Good. Did anyone at Goldman Sachs tell</p> <p>18 you that they -- withdrawn.</p> <p>19 Did anyone at Goldman Sachs tell you that</p> <p>20 they regarded the profits to be derived by</p> <p>21 institutional investors to whom shares were</p> <p>22 allocated as, quote, gifts, closed quote?</p> <p>23 MR. POSELL: Vague as to time. When are</p> <p>24 you talking about?</p> <p>25 MR. WACHTEL: I'm sorry. This is all on</p>

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<p>1 May 19th.</p> <p>2 Q. At any time prior to May 19th at the</p> <p>3 moment the board voted at the pricing committee to</p> <p>4 accept the recommendation of \$20 offered by Goldman</p> <p>5 Sachs, all these questions?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did anyone ever tell you that they</p> <p>8 regarded the -- anyone ever -- hang on a second.</p> <p>9 Withdrawn.</p> <p>10 Do you know the term secondary credits?</p> <p>11 A. No.</p> <p>12 Q. Do you know the term cold deals?</p> <p>13 MR. POSELL: Cold what?</p> <p>14 MR. WACHTEL: Q. Cold deals?</p> <p>15 A. I'm not sure I know that, no.</p> <p>16 Q. At any time prior to May 19th, 1999, the</p> <p>17 time the pricing committee voted, did anyone at</p> <p>18 Goldman Sachs tell you that they thought that the</p> <p>19 share price upon the eToys IPO going effective</p> <p>20 could spike as high as 79?</p> <p>21 A. No, they did not.</p> <p>22 Q. Did they tell you that it could spike as</p> <p>23 high as 69?</p> <p>24 A. No, they did not.</p> <p>25 Q. Did they tell you it could spike as high</p>	<p>1 Q. Five.</p> <p>2 A. -- we -- why did we rely on them?</p> <p>3 Q. Yeah.</p> <p>4 A. Because they're Goldman Sachs, for crying</p> <p>5 out loud, and they make a market and they take</p> <p>6 companies public. They completely control the</p> <p>7 process. They know how to do it. They get it done.</p> <p>8 They raise the money for us. They are the experts.</p> <p>9 They do this every day. We do this once in a life.</p> <p>10 Q. And you trusted them --</p> <p>11 A. Yeah --</p> <p>12 Q. -- didn't you?</p> <p>13 A. -- I trusted them. Yeah.</p> <p>14 Q. Implicitly?</p> <p>15 A. Yeah.</p> <p>16 Q. Explicitly?</p> <p>17 A. Uh-huh.</p> <p>18 Q. In --</p> <p>19 A. Yes.</p> <p>20 Q. -- every sense of the word?</p> <p>21 A. Yes.</p> <p>22 Q. If the eToys IPO had been priced at \$40,</p> <p>23 approximately how much money would you have raised?</p> <p>24 A. \$350 million, approximately.</p> <p>25 Q. And if you had raised \$350 million,</p>
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<p>1 as 59?</p> <p>2 A. No.</p> <p>3 Q. Did they tell you they thought that you</p> <p>4 could sell the shares that were subject to the \$1 at</p> <p>5 \$40?</p> <p>6 A. No, they did not.</p> <p>7 Q. Did they tell you that you could sell your</p> <p>8 shares at anything greater than \$20?</p> <p>9 A. No, not to my -- not to my recollection.</p> <p>10 Q. Did you believe on May 19th, 1999, that</p> <p>11 Goldman Sachs was giving you advice with the</p> <p>12 interest of eToys foremost in their mind?</p> <p>13 A. Yes.</p> <p>14 Q. Do you believe -- did you believe on May</p> <p>15 19th, 1999, that Goldman Sachs was putting the</p> <p>16 interests of eToys first?</p> <p>17 A. I believed they were -- they were -- yes.</p> <p>18 Well, let me put it this way: I believe they were</p> <p>19 looking out for the interests of the company, and</p> <p>20 they were -- they were doing what the company</p> <p>21 needed, required, so I -- I knew they were making</p> <p>22 money, though. I mean, it's not like they're a</p> <p>23 charity, you know what I mean, so --</p> <p>24 Q. Well, you relied on them on May 19th?</p> <p>25 A. We relied on them and --</p>	<p>1 sitting here today, how long do you believe that</p> <p>2 money would have sustained the company?</p> <p>3 A. Well, if we -- if we had raised \$350</p> <p>4 million in equity at the IPO, I don't think we'd be</p> <p>5 here at this deposition today, potentially.</p> <p>6 Q. What does that mean?</p> <p>7 A. I mean, I'd be the CEO of eToys, and</p> <p>8 eToys, I think, would have a materially higher</p> <p>9 chance of having survived and prospered after the</p> <p>10 Internet crash, so that's how I'd answer that</p> <p>11 question. But -- we might still be here, but I</p> <p>12 would be at a different job. Let me put it to you</p> <p>13 that way.</p> <p>14 Q. This morning when you were testifying you</p> <p>15 talked about being on the trading floor at the time</p> <p>16 that the first trade went across the tape. Do you</p> <p>17 remember that?</p> <p>18 A. Yeah.</p> <p>19 Q. Was the opening delayed?</p> <p>20 A. You know, I haven't thought about that,</p> <p>21 but -- in years, but my recollection is there was a</p> <p>22 bit of a delay in the opening, yeah.</p> <p>23 Q. Did anyone at Goldman Sachs ever tell you</p> <p>24 why it was delayed?</p> <p>25 A. I don't recall them telling us why it was</p>

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<p>1 delayed.</p> <p>2 Q. Did --</p> <p>3 A. My --</p> <p>4 Q. -- they tell you the night before that it</p> <p>5 might be delayed?</p> <p>6 A. I don't recall them saying anything the</p> <p>7 night before about it might be delayed.</p> <p>8 Q. Speaking of the night before and, again,</p> <p>9 referring to your testimony earlier today, can you</p> <p>10 close your eyes and perhaps remember who told you</p> <p>11 about the bet that was made and which Lawton Pitt</p> <p>12 won?</p> <p>13 A. Well, she didn't win it that night. She</p> <p>14 won it --</p> <p>15 Q. Okay. So close --</p> <p>16 A. And it wasn't a wagers bet. It was a</p> <p>17 gentleman's forecast -- gentleman's forecast,</p> <p>18 that they were estimating what it was going to be.</p> <p>19 And my recollection was that we -- we had a dinner</p> <p>20 that night with Goldman Sachs people. And my</p> <p>21 recollection is that either George Lee or Betty Hung</p> <p>22 divulged that to me, and the next day the answer was</p> <p>23 reinforced when the actual opening price ticked by.</p> <p>24 That's my recollection.</p> <p>25 Q. When you heard that, do you remember</p>	<p>1 allocating shares to institutional investors who</p> <p>2 were trading with Goldman Sachs for the express</p> <p>3 purpose of generating commissions?</p> <p>4 MR. POSELL: I --</p> <p>5 MR. WARDEN: Object to the form of that</p> <p>6 question.</p> <p>7 MR. POSELL: I don't get it.</p> <p>8 MR. WACHTEL: Okay.</p> <p>9 Q. Did they tell you that --</p> <p>10 MR. POSELL: That -- objection.</p> <p>11 MR. WACHTEL: Q. -- there were institutional</p> <p>12 investors who were engaging in secondary trading</p> <p>13 activity so as to curry favor with Goldman Sachs in</p> <p>14 respective allocations?</p> <p>15 MR. WARDEN: Objection to form.</p> <p>16 THE WITNESS: Well, they never said that</p> <p>17 to me. They never said that to me --</p> <p>18 MR. WACHTEL: Q. Okay. Fine.</p> <p>19 A. -- and I had no knowledge of that.</p> <p>20 Q. Did they ever tell you that they were</p> <p>21 allocating shares to retail customers for a reason</p> <p>22 other than in helping eToys establish a stable base</p> <p>23 of investors?</p> <p>24 A. They never said that. They never said</p> <p>25 they did it -- the answer is no.</p>
Page 275	Page 277
<p>1 sharing it with anyone else?</p> <p>2 A. I don't remember sharing it with anyone</p> <p>3 else, but it's possible I did.</p> <p>4 Q. Do you know, sitting here today, to whom</p> <p>5 those shares of e -- withdrawn.</p> <p>6 Do you know which institutional investors</p> <p>7 got allocations of eToys' shares as part of the IPO?</p> <p>8 A. The -- the only -- what I know is what</p> <p>9 I've seen in documents that you attorneys have shown</p> <p>10 me, like these slip reports and stuff. That's the</p> <p>11 basis of my knowledge.</p> <p>12 Q. Did Goldman Sachs ever tell you that it</p> <p>13 was allocating shares to certain investors expecting</p> <p>14 to receive back from them some form of compensation?</p> <p>15 A. No.</p> <p>16 Q. Did they -- did Goldman Sachs tell you</p> <p>17 that they were allocating shares to institutional</p> <p>18 investors who were giving excess commissions to</p> <p>19 Goldman Sachs on other transactions?</p> <p>20 A. No.</p> <p>21 Q. When I say excess commissions, I mean</p> <p>22 commissions greater than they might otherwise have</p> <p>23 earned.</p> <p>24 A. They never said anything like that to us.</p> <p>25 Q. Did they ever tell you that they were</p>	<p>1 Q. Did you ever doubt on or before May 19th,</p> <p>2 1999, that eToys -- that Goldman Sachs was going to</p> <p>3 -- was going to allocate your shares in a manner to</p> <p>4 create a stable group of long-term investors?</p> <p>5 A. Could you start -- repeat that question</p> <p>6 again?</p> <p>7 Q. Sure. Let's try it this way --</p> <p>8 A. Okay.</p> <p>9 Q. -- when Goldman Sachs put you on -- on</p> <p>10 January 19th, 1999, they said that they understood</p> <p>11 your objective of creating a balanced mix of</p> <p>12 shareholders who would understand the eToys story</p> <p>13 and position. Sitting here today, do you believe</p> <p>14 they did that?</p> <p>15 A. No.</p> <p>16 Q. On January 18th, 1999, they told you that</p> <p>17 they would be supporting eToys in the after-market.</p> <p>18 Do you believe they did that?</p> <p>19 A. On some dimensions, yes, with respect to</p> <p>20 research.</p> <p>21 Q. And on other dimensions?</p> <p>22 A. I think you're asking a question about --</p> <p>23 I --</p> <p>24 MR. POSELL: If you don't understand the</p> <p>25 question --</p>

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<p>1 Q. But did they ever tell you the true size 2 of the book?</p> <p>3 A. They did not give us a statistical report 4 of the actual distribution of demand, the actual 5 ratio of how oversubscribed. We had a general sense 6 that it was oversubscribed. We were told that there 7 was, you know, demand for some people in those 8 brackets of price, but we didn't get access to the 9 data. We were never shown the data. I was never 10 shown the data. I can't speak for other people, but 11 I was never shown that data.</p> <p>12 Q. Were you ever told the amount of demand at 13 any price greater than 20?</p> <p>14 A. Quantitatively?</p> <p>15 Q. Quantitatively.</p> <p>16 A. No.</p> <p>17 Q. Did you ever have any discussion with 18 Goldman Sachs about the fact that the stock spiked 19 to 79?</p> <p>20 A. You mean did I voice my displeasure?</p> <p>21 Q. Did you discuss it with them on any basis?</p> <p>22 A. No, not that I recall.</p> <p>23 Q. Why not?</p> <p>24 A. Why not? So -- so -- let me give you -- 25 let me tell you a little story about -- about why</p>	<p>1 I can tell you that nearly sunk the company.</p> <p>2 Q. You got stopped hard because you took the 3 deal away from them --</p> <p>4 A. Yeah.</p> <p>5 Q. -- and gave it to Goldman?</p> <p>6 A. So you don't go to banks and say -- you 7 don't start making a -- what are you do? How do you 8 make a stink to the bank? They got the money. They 9 know where the money is. We need the money. What 10 -- I don't have power over any of these banks. In 11 fact, they have power over me. I'm not going to go 12 and say, "Goldman Sachs, oh, tick, tick, tick. You 13 know, you did this and you did that." I need them. 14 I'm stuck. What am I going to do? I'm stuck.</p> <p>15 Q. If Henry Bladget really did that to you --</p> <p>16 A. Why didn't we sue?</p> <p>17 Q. No. I'll ask it differently. Did anyone 18 at Goldman Sachs ever share with you their feelings 19 about what Henry Bladget did to you?</p> <p>20 A. Goldman Sachs was very upset, too, because 21 that -- they put them in a very awkward position in 22 that financing.</p> <p>23 Q. Who told you what in that regard?</p> <p>24 MR. POSELL: I'm sorry.</p> <p>25 MR. WACHTEL: Q. Who did Goldman Sachs told</p>
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<p>1 not, you know, because I think -- I think you asked 2 that question. I think the other attorneys asked me 3 that question. Voicing displeasure to investment 4 banks -- let me tell you a little story about what 5 happened when we did our convertible debt offering, 6 to give you a sense of why you don't voice 7 displeasure to investment banks.</p> <p>8 We initially selected Merrill Lynch to be 9 our lead convertible debt underwriter, and Goldman 10 Sachs came in and put a strong foot forward to take 11 that away, and Merrill Lynch we kept as a secondary 12 underwriter in the secondary position and kept them 13 in the deal. They were in the deal, and I believe 14 it was the morning of the deal going into the 15 marketplace or the night before or right around that 16 time Merrill Lynch's lead Internet analyst, Henry 17 Bladget, downgraded our stock as that was going into 18 the marketplace and made it extremely difficult for 19 that placement to happen.</p> <p>20 The investment banks have punitive power 21 over us. We need them to raise capital. You don't 22 go complaining to investment banks because they will 23 crush you, and that is a perfect example. We got -- 24 we got penalized by Merrill Lynch. We got -- we got 25 slapped hard, and it nearly sunk that offering, and</p>	<p>1 you what in respect of Henry Bladget's downgrading on 2 the eve of the convertible offering?</p> <p>3 A. I don't recall the specifics, honestly, 4 but -- but it was very clear to my chief financial 5 officer, Steve Schoch, that Goldman -- and these 6 were different Goldman people than our IPO team, 7 because it's the debt side of the house, and this 8 was different people. But it was just clear -- we 9 all understood clearly what happened, and I -- you 10 know, to this day, you know, it's just -- it's a 11 prime example of what a little company -- what 12 happens to a little company if they try to stand up 13 to an investment bank and get them mad at them, what 14 can happen to them.</p> <p>15 Q. Well, do you remember meeting with Hank 16 Paulson in the summer of 1999?</p> <p>17 A. Hank Paulson, the CEO of Goldman Sachs?</p> <p>18 Q. Yes, sir.</p> <p>19 A. Yes, I do.</p> <p>20 Q. Tell me about that meeting.</p> <p>21 A. My recollection was Mr. Paulson was doing 22 a -- was in Los Angeles on business. It wasn't for 23 us, but for some reason he wanted to do a drive-by 24 and have a meet-and-greet and a handshake session, 25 and, you know, we were absolutely not going to say</p>

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
CERTAIN PUBLIC OFFERING) FILE NO. NY-4757
ASSOCIATIONS)

WITNESSES:

PLACE:) through 151

PLACE: Securities and Exchange Commission,
100 California Street, Suite 4000
Denver, Colorado 80202

DATE: Tuesday, February 19, 1962

The above-captioned matter came on for hearing, pursuant to notice, at 9:30 A.M.

APPEARANCES:

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SEE FORM 1002
Formal Order of Investigation
Revision of Unknown File for
Investigation of 1/1/62
1/1/1962 revised from hearing to meet
1/1/1962 revised from Rosenberg
to Reid
"The Company Value: Dependability
the Value Exchange in the
Underwriting Business", 1/1/1962
"American Private Venture Fund,
Total Business Through August 1960"
"Aftermarket Buying and Selling
Report for Levine Communications"
"Aftermarket Report for American
Private Venture Fund"

APPEARANCES - CONTINUED

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PROCEEDINGS

MS. FRANCIS: On the record at 9:28 on
February 19, 1962.

MR. GREGG, please raise your right hand.
Witnesses,

was called as a witness and, having been first duly sworn,
has examined and testified as follows:

MS. FRANCIS: Please state and spell your full
name for the record.

THE WITNESS: My name is Andrew Hain Gregg. And
spell it?

MS. FRANCIS: Please.

THE WITNESS: Andrew-Hain, Hain, Hain-Hain, Gregg,
Hain-Hain-Hain.

MS. FRANCIS: My name is Roberta Francis and
with me is Louis Smith and Tami Stark. We are Officers of
the Securities and Exchange Commission for purposes of this
investigation.

This is an investigation by the United States
Securities and Exchange Commission in the matter of certain
certain public offering associations, NY-4757, to determine
whether there have been violations of certain provisions of
the Federal Securities Laws. However, the laws developed in
this investigation may constitute violations of other Federal

1 York PCS around 1995 or 1996?

2 A Yes. And it was closed or shut down because of the

3 ratio, though. I remember it was the ratio.

4 Q Was it James Donovan?

5 A James Donovan?

6 Q Have you heard that name before?

7 A Jim Donovan?

8 Q Jim?

9 A Yes. I know Jim Donovan.

10 Q But that's not the branch manager, is it?

11 A No, no. Jim Donovan was part of the Next Century

12 team --

13 Q That's what I thought.

14 A -- who became a partner, I think, during the time

15 that Next Century was in place.

16 Q Okay. We'll get to them. Let's talk about this

17 formula a little bit more. You mentioned that you do recall

18 specific conversations with both Scaramucci and Bozarth about

19 their formula. Do you understand or do you know if the

20 formula for 50 percent payback your first year and then the

21 change, do you know whether that was a Goldman over-arching

22 policy, or was that just something that Scaramucci and

23 Bozarth created?

24 A Well, I don't believe they created it because --

25 how is it that I don't believe they created it? I just

1 is written in Goldman terms, but this is what we do. That's

2 why I'm saying, I do remember somebody saying, "This is what

3 everybody at Goldman has done. Why is it that they're so

4 successful and why do they take all your money back?"

5 So, I mean, like I've mentioned before in other

6 conversations that it was a battle with Goldman Sachs. I

7 battled, I mean, to make money with them, battled, because

8 they know always to get all the pennies back that they could.

9 And it was a battle.

10 So I don't have any specifics, but I do believe

11 that it wasn't these guys' idea. I think this was handed

12 down from lots of people.

13 Q So the formula, again, is you pay back 50 percent

14 your first year, or times two?

15 A No. I think they had me actually at 30 percent.

16 and then they later on told me that it was 50 percent. And

17 I'm like, "Hey, wait a second, you know. You guys are hosing

18 me for an extra 20 percent," or something like that, which --

19 not hosing me because I was making money, I guess. But the

20 the -- what was the question? I've forgotten.

21 MR. PARKER: I understood Andy to say that the

22 account rep gets to keep 50 percent of the commission during

23 the first year an account is opened.

24 THE WITNESS: Correct.

25 MR. PARKER: And then the account rep gets 40 or 30

1 remember conversations, and I don't know who it was with,

2 that said, this is what Goldman's done forever. Like this is

3 what Goldman has done forever once you get in to the right

4 people.

5 Q Who are the right people?

6 A The people that -- like that can get syndicate, and

7 that this is how they functioned and done their business.

8 Q Do you know whether those right people, is that

9 just in the PCS group, or is it PCS plus institutional? Do

10 you know whether that formula goes across both or just the

11 one?

12 A I don't know. But I just remember -- I don't

13 remember any specifics, but I do remember somebody, whoever I

14 was talking to, saying -- and I don't know if it was a friend

15 of mine mentioning this. I don't know whether it was

16 somebody I was working with. I don't remember who it was.

17 But I do remember me telling this to somebody and

18 then them saying, this is Goldman Sachs. I mean, this is

19 what they do.

20 Q Do you remember whether or not Scaramucci or

21 Bozarth or anyone else at Goldman ever said to you, this is

22 the Goldman way, or this is what Goldman does, this is what

23 you have to do, is follow the formula at Goldman? Do you

24 remember any employees of Goldman --

25 A Saying this is the Goldman way? Not saying, this

1 percent in successive years.

2 THE WITNESS: So then they switch to a new account,

3

4 MS. FRANCISCUS: I see.

5 MR. PARKER: So there are two ratios.

6 MR. FERRARA: What he said was, I think, if he made

7 \$100,000, they were expecting \$100,000 back. And the way

8 they'd get the \$100,000 back is by getting commissions, 50

9 percent for the first year of the account and then it would

10 go do.

11 MS. FRANCISCUS: I see.

12 MR. FERRARA: What I don't think we've established

13 clearly is whether the formula, Andy, was basically they

14 wanted a dollar for every dollar you made, or they wanted

15 50 cents for every dollar you made, or --

16 THE WITNESS: They wanted a dollar for every dollar

17 I made. No question.

18 MR. FERRARA: And then the question was, how do

19 they earn that dollar? And they earn the highest gain on a

20 commission dollar in the first year of an account.

21 MS. FRANCISCUS: Right. And then it goes down as

22 the account --

23 THE WITNESS: If the account did over 500,000 --

24 MR. FERRARA: Sorry. And that's why they wanted to

25 reopen, and he said yes.

1 THE WITNESS: Actually, I would really like to go
2 to the bathroom.

3 MS. FRANCISCUS: Let's take a five-minute break,
4 and we're off the record at 9:35.

5 (A brief recess was taken.)

6 MS. FRANCISCUS: We're back on the record at 9:42
7 on February 19th.

8 BY MS. FRANCISCUS:

9 Q Mr. Scaramucci, we were talking --

10 MR. FERRARA: Sorry, Segal.

11 BY MS. FRANCISCUS:

12 Q Segal, I apologize. We were talking about
13 Lancaster International over in London.

14 A Yes.

15 Q And I think we were at the point where I'd asked
16 you whether you had ever been asked by Mr. Stevens to pay
17 back commissions in return for receiving IPO allocations.

18 A I'm thinking, Yes.

19 Q And additionally, just for the record, while we
20 were off the record, did we have any substantive
21 conversations about this case?

22 A I'd say no. I was thinking about you guys. I'm
23 like, I don't know what you guys said.

24 MR. FERRARA: That's what they ask when they just
25 come off of training, by the book.

1 A Yes. Not always. I'm just saying sometimes.

2 Q Sometimes.

3 A You know, "You made a killing."

4 Q And did he ever explain to you how he wanted to be
5 paid back? Was it through excessive commissions, or did he
6 ever explain to you how to pay it back?

7 A No. But we both knew that I knew how, and he knew
8 that I knew how and he knew how, through, I think -- I can't
9 remember exactly what we did in this account, whether it was

10 bonds -- I'm pretty sure we did a lot of preferred bonds,

11 grey market bonds, all of the above. I mean, commissions,
12 however I could generate. Flat deals.

13 Q Do you remember approximately how many cents per
14 share you paid on commissions for your Lancaster account?

15 A No. I think, from the Goldman Sachs -- the first

16 few relationships, they were more interested in making

17 commissions paid back on syndicate issues, such as a flat deal
18 that paid them \$1.80 a share, something like that.

19 Q Do you mean the selling concession?

20 A The concession. I'm sorry, the concession. Right.

21 That was just much more lucrative. If they do 100,000 shares

22 at \$180,000 in commissions, that's much easier than --

23 Q Six cents per share?

24 A -- 6 cents per share or 25 cents per share. And

25 since I think -- since, also --

1 BY MS. FRANCISCUS:

2 Q I'm sorry. What was your answer?

3 MR. FERRARA: He answered yes.

4 MS. FRANCISCUS: He answered yes, that he did?

5 THE WITNESS: No substantive --

6 MR. FERRARA: No. He answered yes to the question
7 of whether or not he had ever been asked by the rep in London
8 to pay back.

9 THE WITNESS: Yes.

10 BY MS. FRANCISCUS:

11 Q And what specifically do you recall?

12 A You made \$50,000; how about \$25,000 back?

13 Q And again, did you --

14 A Something like that. Okay?

15 Q And did you flip your IPO allocations through
16 Goldman?

17 A No.

18 Q But did you tell him what price you had flipped at
19 or that you had flipped?

20 A Yes.

21 Q And so he knew that you had flipped. He knew what
22 the price was. So he knew what you made on profits from your
23 IPO flipping activity?

24 A Yes.

25 Q And so he asked for a certain amount back?

1 Q Did they -- how do you know that that's how they
2 preferred that you pay back commissions? Did you have a
3 discussion with someone, or how do you know?

4 A Because they would tell me, number one. And number
5 two is, since they were PCS, it was very different. And the
6 institutional. Institutional, I think, is salary and bonus.

7 PCS, they got their -- they got a percentage of the
8 commissions based on their payout.

9 Q So their salary was -- or their compensation was
10 interlinked with --

11 A The concessions.

12 Q -- the commissions and the selling concessions?

13 A Yes. So they were very happy to be getting \$1.80

14 per share concession because they would be 50 percent of
15 that, or whatever percentage that was.

16 Q I see. And so do you remember or do you recall a
17 specific conversation with Mr. Stevens about paying back
18 through buying flat deals or through getting more of the
19 IPOs?

20 A Yes, I do.

21 Q Okay. And how do you know that Mr. Stevens knew
22 you knew how to pay back? I mean, how do you know that?

23 A Because I would get the lion's share of his

24 allocations, from what he told me. And since I could ask
25 around what people were getting through Anthony Scaramucci or

1 discussions with Scaramucci, it was a dollar for a dollar.
 2 He also testified with respect to Stevens it was 50 cents on
 3 a dollar. I don't know if that was an example or if that's
 4 what your recollection was.
 5 THE WITNESS: It was an example. I mean, Stevens.
 6 I did of -- I did him. He took care of me, so I probably
 7 paid him -- I probably paid him maybe a dollar for a dollar.
 8 I don't remember. But I didn't have like a formula, though,
 9 with him.
 10 BY MS. FRANCIS: OK.
 11 Q Okay. So there was no specific discussion about
 12 the formula for payback?
 13 A No. No. Nor was I going to bring it up. Anthony
 14 and Andy Bozarth were very aggressive with me. Let's just
 15 work your account and work it hard. And it seemed like
 16 Andrew Stevens was more in my -- no my team, just more for --
 17
 18 Q More in your interest?
 19 A Just more not so greedy. Let's both make money and
 20 let's not worry about the details as much.
 21 Q Okay. After Lancaster -- or maybe at the same
 22 time; I'm not sure -- what other accounts did you have at
 23 Goldmans Sachs?
 24 A I think after Lancaster came Portfeller.
 25 Q Portfeller Oil & Gas. Correct?

1 A Yes, O&G. I don't know if it's called Oil & Gas or
 2 O&G, but --
 3 Q That's fine. We can call it either.
 4 A Okay. Oil & Gas. We'll call it Oil & Gas.
 5 Q Okay. Let's start with the indication of
 6 Portfeller Oil & Gas. How did you get the account? Who was
 7 it with? Start with the opening indication.
 8 A Okay. Opening indication. Anthony Scaramucci
 9 introduced me to Barry Snyder. Barry Snyder was an
 10 institutional salesperson in New York City. I think I met
 11 Barry in New York City, and he was becoming -- he was going
 12 into high net worth, a group of private clients, same thing
 13 at Goldman.
 14 And Anthony introduced me to him because Barry was
 15 like two years behind Anthony type of situation, where Barry
 16 Snyder was institutional moving to running his own book, just
 17 like Anthony did to run his own book from institutional. So
 18 they already had the institutional connections. Continue?
 19 Q What year was this, if you can recall?
 20 A Yes. Portfeller started, I think, 1997. Let's
 21 say -- I think 1997, August of '97, probably.
 22 Q So approximately August of 1997. And was
 23 Mr. Snyder located in New York City at that time or was he
 24 elsewhere?
 25 A When I met Barry Snyder -- could I call him Barry

1 from now on? It's easier.
 2 Q Sure.
 3 A Well, I'll call him Barry Snyder.
 4 Q That's fine.
 5 A When I met Barry Snyder -- that's just how I refer
 6 to him -- I met him in New York City personally. And then
 7 he -- Anthony explained the ratio/clipping game to Barry --
 8 Q Hold on. Who was in this meeting when you met
 9 personally with Mr. Snyder in New York City? Was
 10 Mr. Scaramucci present?
 11 A I don't remember. But I do remember meeting Barry
 12 via Anthony. "Hey, go meet Barry. I'm eating with him at
 13 some Italian restaurant," so maybe Anthony was there. You
 14 know, I don't remember.
 15 Q That's fine.
 16 A I can't remember.
 17 Q So you met with Mr. Snyder. And I interrupted you
 18 as you were saying Mr. Scaramucci explained to Mr. Snyder
 19 something.
 20 A Yes. The whole ratio game and how it's all played.
 21 Q How do you know that Scaramucci told Mr. Snyder
 22 this?
 23 A Because Anthony told me that he did, and Barry told
 24 me that he did. And Barry actually had it -- I think either
 25 Barry had it computerized -- no Barry knew to the dollar

1 where it was, as well as this time I thought it would be
 2 smart so I set up a little spreadsheet on Lotus 123 -- not
 3 Lotus 123 but on something where I could actually track the
 4 profits and then it would divide by 30 -- I don't know. I
 5 don't have it, but it was -- I knew to the penny then because
 6 I didn't want to get abused this time.
 7 Q So you said that Mr. Snyder had it computerized.
 8 Do you know what exactly went into that computer spreadsheet,
 9 what he was tracking?
 10 A Profits versus commissions divided by three, I
 11 think.
 12 Q And that was to be your payback amount, what came
 13 out of that formula?
 14 A Right. Exactly. And it needed to equal -- at the
 15 top, each number needed to equal each other. That's what it
 16 showed on my spreadsheet.
 17 Q Did he ever provide -- did you ever see this
 18 computerized spreadsheet, either the computer itself or a
 19 document that came from it, from Mr. Snyder?
 20 A From Snyder? No. I never did.
 21 Q How do you know that it existed?
 22 A He seemed to be -- okay, I don't. Let me just say
 23 I don't. But he seemed to know exactly where I was, so --
 24 Q Did he refer to it? Did he say, "Oh, I'm looking
 25 at your commissions to date?" You know, did he seem to refer

1 to a specific sheet or document in front of him that had this
2 information on it? Do you recall that?
3 A No, I don't recall that, actually. I think maybe
4 he may have referred to mine. But he -- you know, it may
5 have been he referred to my spreadsheet.
6 Q Okay. I'm sorry I kind of jumped ahead there.
7 We'll probably come back to that.
8 Now, you met with Mr. Snyder in an Italian
9 restaurant in New York City?
10 A Before he became a broker in Miami.
11 Q Okay. And did you open up your account with him
12 while he was in New York City or while he was in Miami?
13 A Miami.
14 Q So he moved to Miami. Do you remember
15 approximately when? Was it around that same time period?
16 A Around probably the summer of '97.
17 Q And this was also a P.C.S. private client services,
18 retail account?
19 A Yes. High net worth. Correct.
20 Q Opened in Miami. Who was on Mr. Snyder's team,
21 sales rep team?
22 A It was Barry Snyder, and then he brought down a
23 trader, and I cannot remember the guy's name for the life of
24 me. No, I guess I can. Bob. I think it was Bob. He used
25 to be a trader from -- who traded like -- I don't know if he

1 So he decided to call me Drew. Okay? I remember
2 that was his thing. So then Drew was Andrew, but it wasn't
3 like Andy. Okay?
4 Q I see.
5 A And then I remember we were laughing at the time.
6 Q I'm sorry to interrupt. Was this during the dinner
7 at the Italian restaurant or was this something else?
8 A No. This was some time when we were getting the
9 account opened. I think it was over the phone.
10 Q Okay.
11 A I believe. It wasn't over the dinner, for sure.
12 And it was when I was down in -- when he was opening me up in
13 Florida. For example, let me go back to like Lancaster, for
14 example. I think Andrew Stevens had to write up a thing
15 about my family so that they -- they all have to write things
16 up.
17 Q Of course.
18 A So if you looked in the files, I think he wrote up
19 something that came up that my family was a wood trading
20 company. Okay? Now, I didn't come up with the wood trading
21 company. We traded wood, Lancaster. Okay? That's what I
22 think his report said.
23 Barry's report was that Portfelter was an oil and
24 gas company in Florida or something, and part of the reason
25 why we named it an oil and gas company in Florida was as a

1 traded Microsoft, but he was a position trader in the New
2 York office, I think. And then he went on to London to be a
3 position trader. His name was Bob something. He was a
4 really good tennis player, so I do know that about him.
5 Q You met Bob?
6 A Yes. I met Bob when I went to Florida.
7 Q How many times did you meet Bob, do you think?
8 A Once, I think. I think I -- well, I'm sorry. I
9 think I met Barry two or three times, max.
10 Q In person, you mean?
11 A In person.
12 Q And when you set up Portfelter Oil & Gas, did you
13 have Portfelter, the entity, in place before you met Barry
14 Snyder or as you were meeting Barry Snyder or after? When
15 was the time frame of setting up Portfelter?
16 A Well, Barry and I -- I remember we, I think, named
17 Portfelter together.
18 Q Let's talk about that.
19 A Yes. Okay. Barry --
20 Q Tell me how your conversation with Barry Snyder
21 went in which Portfelter was created.
22 A Barry is like, "We need to come up with a name but
23 we can't use Andy Siegal because Andy Siegal has been
24 demolished by Searamucci up in New York. So we've got to
25 come up with a name, and who can we use?"

1 joke because there's no oil down there. We're like, this has
2 got to be hilarious.
3 But -- and then I was like -- I think I said, "Why
4 don't we make it the port of something because it sounds
5 good," and then he, I think, came up with felter.
6 Q So Mr. Snyder helped you create a fictional name
7 for a fictional company --
8 A Correct.
9 Q -- that became an account at Goldman?
10 A Yes. And had -- I think Linda Hager actually
11 signed on that account. Because the reason why Linda Hager
12 signed on -- do you want me to stop or keep going? The
13 reason why Linda, I think, Hager -- you know Linda Hager --
14 she signed on the account was because I couldn't sign on the
15 account because Andy Siegal had a bad name because I did too
16 much syndicate commissions up in New York.
17 And so he had Linda sign on it -- this is what I
18 believe -- and called me Drew.
19 Q Okay. So let's talk about that a little bit more.
20 Linda Hager, for the record, is someone who works with you?
21 A She worked -- she was one of the people that worked
22 in the back office with Henry Lustig's accounting group and
23 clearing group.
24 Q Okay. So whose idea was it to have Ms. Hager sign
25 as the account contact person for Portfelter?

1 A He was like -- the conversation. And then I would
2 interject.

3 Q Okay. And the branch manager bought into the
4 story? Is that correct, do you think?

5 A Yes. I think he absolutely didn't want to not buy
6 into it because we were their number one account. I think, or
7 number two account, something -- we were a multimillion-
8 dollar account.

9 Q They definitely wanted to keep it?

10 A Yes.

11 Q And the compliance personnel, did you meet with
12 them with the branch manager or separately?

13 A No. Separately from the branch manager, just kind
14 of on the way out, I think.

15 Q And do you remember the compliance officer's name?

16 A No.

17 Q Was that a brief meeting?

18 A It was like on the way out meeting. He didn't want
19 us spending too much time with her. Barry drove the show.

20 Q And so he shuttled you in and shuttled you out?

21 A Shuttled us in and shuttled us out. Didn't want us
22 meeting too many people.

23 Q Just wanted you to make your appearance --

24 A Yes, that we are human beings.

25 Q -- satisfy the requirements, and get out?

1 A I mean, the key thing is, like I said, I never DK'd
2 a trade except for, I think, one time when somebody put the
3 wrong trade in there. But -- and then I got them to send me
4 a letter. But I never DK'd any trade in all the years that I
5 traded except for one bad trade.

6 Q Do you think that makes you a good customer?

7 A I think it made -- I think I had a reputation of
8 being a good -- a really good customer, yes. I think so.

9 Q Was the account discretionary, the Portfeller Oil &
10 Gas account?

11 A Did I sign discretionary papers, or did Linda sign
12 discretionary papers, I mean? I don't know. But I do know
13 for a fact that that is why we ended up shutting the account
14 down, because Barry Snyder was trading every single day
15 discretionarily, and I was afraid I was going to walk into
16 the office one day and have a million or two million dollar
17 loss.

18 And he was so greedy -- the guy was one of the
19 greediest guys I've ever dealt with -- that I made him send
20 me a letter saying he shut the account down because I was so
21 nervous about walking into a disaster, and there would have
22 been no way I could have argued my way out of that because it
23 had a huge pattern of day trading. Why would -- and then
24 they'd say, "Hey, you took a big loss this day. Why this day
25 would not you accept that trade?"

1 And since he was day trading without me knowing
2 about it, at the end of every day I would come up and he
3 would say, "Oh, by the way, you just lost" -- when. And I
4 finally said, I can't take this. I used to fight and scream
5 at him every single day, to the point where I said, I'm going
6 to have a nervous breakdown. So that's when I decided to
7 shut it down.

8 Q Okay. You said he was the greediest person -- or
9 you described him as completely greedy.

10 A Yes.

11 Q Describe why you think he was greedy. What did he
12 do that made you think he was greedy, specifically?

13 A He took risk in my account without telling me about
14 the -- I mean, he took risk -- like, for example, Anthony, I
15 felt, was a greedy guy. But I trusted him. You know, you're
16 greedy, but I trusted him to make money for me eventually.
17 He knew that I needed to make money. He needed me to make
18 money.

19 Barry Snyder wanted to take all of my money that I
20 had made, and if he could have made me negative, he would
21 have. He would have been just happy getting all the money
22 out of me as possible. And he tried. Every day it was
23 some -- it was another ordeal, another ordeal.

24 Q Describe like on every day that was an ordeal where
25 you would have conversations with him where you were upset.

1 Describe --

2 A Like, "What" -- you know, I don't want to say the
3 word --

4 Q That's fine.

5 A You know, "What the fuck did you put this in my
6 account for? There's no fucking way I'm taking this." And
7 he'd be like, "Well, if you want these new issues, then you'd
8 better take this trade." I mean, these things. "And if you
9 want to stay here and keep trading, you better take this
10 trade."

11 I felt loyal to him for one real, main reason, was
12 because I thought that he was a friend of Anthony's, which I
13 don't believe he really was, after the more I found out,
14 and -- because I don't believe he did to -- I think he was
15 supposed to refer Anthony some business or something and he
16 didn't.

17 And I also -- I also know that -- what was the
18 question again? I forgot. Why is he so greedy? I'm just --

19 Q Yes. What specific things did he do? And you gave
20 me the example of, if you want this new issue, you'll take
21 these trades.

22 MR. FERRARA: The question you were responding to
23 is, why do you think he wasn't a friend of Andy [sic]
24 Skaramucci?

1 THE WITNESS: Anthony Scaramucci? Well, first of
2 all, I don't think he was a friend of Anthony Scaramucci
3 because afterwards, Barry covered Anthony's brother, I found
4 out later on, and --

5 BY MS. FRANCISCUS:

6 Q You mean David Scaramucci?

7 A I don't know.

8 Q Possibly?

9 A Possibly David Scaramucci. I met Anthony's brother
10 one time at Anthony's house, but I don't know who he was. I
11 don't know his name. But -- or I can't remember his name.
12 But I think that from what Anthony was saying, he was like
13 just being really abusive to him, too. And -- what were
14 we -- I'm kind of getting lost here.

15 Q No, no, no. That's fine.

16 A Should I just stop?

17 MR. FERRARA: I think you've finished that point.

18 BY MS. FRANCISCUS:

19 Q In what ways was he greedy? And the first thing
20 you gave me was that if you want these new issues, you've
21 going to take these trades.

22 A Right.

23 Q What specifically -- was that language that he said
24 to you?

25 A Yes.

1 Q When you said, "Listen, why are you putting these
2 trades in my account," he said, "Because you're going to take
3 these trades if you want the new issues?"

4 A Correct. Yes.

5 Q What other things like that did he say to you?

6 A He would wake up in the morning and say, "Hey,
7 there's huge news on AT&T today, or McDonald's. Huge volume
8 is going to be -- let's cross 400,000 shares," or something.
9 I mean --

10 Q So on that vein, he would suggest stocks that he
11 wanted you to make cross trades on?

12 A Yes. All the time.

13 Q All the time? That was a very frequent occurrence
14 for him?

15 A Every day. Every day or every other day.

16 Q And did he want you to make those crosses on the
17 open or on the close? Did he care whether you were at risk
18 at all?

19 A He didn't care as long -- no, he didn't care.

20 Well, he knew that they were crosses, so he just cared that
21 there was commission and that he was getting his percentage.
22 And I think we were doing lots of bonds, the gray market
23 bonds.

24 Q Gray market bonds?

25 A But he was always very careful about my ratio, and

1 he constantly --

2 Q For the record, your ratio of syndicate to
3 non-syndicate?

4 A Syndicate to bond credits, yes. Syndicate to
5 non-syndicate, yes. And he definitely was -- I think he
6 worked it -- if you had records or something to find out, it
7 would come out to, he'd say, "You're at 49 percent. Perfect.
8 You need to be 50, at least under 50." And I'd be at 49
9 percent, usually, all the time.

10 Q And let's talk a little bit more about this ratio
11 conversation that he had with you. Did he specifically tell
12 you that you needed to keep your ratio at 49 -- or under 50
13 percent, one-to-one, basically?

14 A Yes.

15 Q Is that what he said to you?

16 A Yes. And so did Andrew Stevens.

17 Q So they knew that there was a ratio that needed to
18 be imposed on the account, and they told you that?

19 A Yes.

20 Q And they did -- they made efforts to keep you
21 within that ratio?

22 A Yes. Otherwise, the accounts would go away. And I
23 actually made efforts, once I learned after the Nectar Tea
24 debacle to make sure that they didn't do -- screw up my ratio
25 because otherwise I wouldn't have an account at Goldman

1 Sachs.

2 Q Okay. And how many IPOs would you say, per month
3 or per day, if you could, did Portfelter Oil & Gas get from
4 Goldman Sachs?

5 A I was in every deal, I would say, every -- IPOs and
6 secondaries, you mean?

7 Q Yes.

8 A Everything. I think -- I tried to be in
9 everything. That's just how I ran my side of the business.

10 I just didn't pick and choose. I just did everything. It
11 depended, though, on -- Barry would be able to seemingly get
12 much larger allocations in the cold flings. No question. I
13 mean, there's no question. When it came for Portfelter to
14 get a hot one, I would get maybe a couple thousand shares.
15 But I could get whopping size in the cold ones. Huge.

16 Q A couple questions about that. On the cold deals,
17 did you ever have a conversation -- at the flat deals, did
18 you ever have a conversation of why you'd get huge
19 allocations on that? And by that, I mean did you ever have a
20 conversation where he said, "Listen, the selling concession
21 on this is such-and-such. You're going to get a huge
22 allocation because you can pay back a large amount?"

23 A Yes. For sure.

24 Q And that was specifically said between you and Mr.
25 Snyder in the conversation?

1 ever hear that from him?

2 A No. Not that I remember.

3 Q Did he ever tell you that he tracked how much
4 commissions you had paid? I mean, we talked about this
5 computerized program that you had done. Do you know whether
6 he tracked them, again, where there was some confusion as to
7 whether or not he --

8 A Well, I know he knew what I paid, no question,
9 because he actually, A, had to monitor the ratio of fees to
10 syndicate concessions. And he also would give me updates:
11 "Hey, here's what you're at for the year. You're at, you
12 know, X dollars."

13 Q So it was you're at for the year in dollars? It
14 wasn't, you know, you're so many million for the year and
15 you're number two in the firm or number two in PCS?

16 A It would be -- he did mention something like --
17 when I closed the account, they were freaking out because
18 that's when it was -- caused a kind of upset in his firm
19 because I was, I think, one of the number one or number two
20 accounts in the firm -- not the firm, in that office, in that
21 branch.

22 Q In the PCS branch?

23 A In the PCS branch. And they're like, what do you
24 mean, the account's going away? You know, and where are they
25 going? Are they just shutting down or --

1 Q And what can we do to keep them?

2 A And what can we do to keep them? But I knew for a
3 fact that -- I was also at that time trying to -- I said,
4 okay, here's what I want to do. Or do you want to hear this?

5 Q Yes.

6 A Here's what I want to do. I've got to shut Barry
7 down. I can't stand this sneaking around stuff any more,
8 being Drew. So I want -- Lancaster -- I think I closed it
9 right around that same time, or it got closed for -- because
10 they did a whole investigation internally based on Spear
11 Leeds accounts. Okay? Goldman Sachs did. And so my
12 Lancaster account either -- I think got shut down -- yes, it
13 got shut down.

14 And then -- so I tried to open up an account called
15 Trans World, which was named Andy Siegal. Trans World, my
16 Social Security number. I sent New York -- do you want me to
17 keep talking? Okay. New York, and a guy named for sure -- I
18 think it was Howard Lipper. He was an attorney in New York.
19 I think compliance, and Josephine Linden.

20 And I think I spoke with Josephine Linden once with
21 Howard Lipper. And they got me on the phone and I sent them
22 my passport. I sent them all this information about myself
23 so that they could see it's Andy Siegal. I told them,
24 "Look" -- I don't know if I said "Look." "I had all these
25 accounts at your firm." I can't remember -- I'm pretty sure

1 I did.

2 I had Nectar Tea -- I do know that they talked
3 about Nectar Tea because they brought up the name. They
4 said -- well, Howard knew -- Howard and Josephine knew that I
5 had Nectar Tea for sure because they brought that up. They
6 said, "Well, why does it say here that Nectar Tea is a, you
7 know, trading company or whatever?"

8 And I just said, "Well, because that's what Anthony
9 had written on this. And I'm trying to come clean. I want
10 to just have one account in your firm called Trans World."
11 And Josephine, I think, was on this phone call, and she was
12 friend with Anthony Scaramucci. So I believe she would have
13 pushed it through under Andy Siegal.

14 And Howard Lipper said, "No way. This guy has just
15 had too much crap here." I don't know if he mentioned my
16 ratio was bad in Nectar Tea, I think. But I came clean with
17 them. They wouldn't open me up.

18 Q Can I ask, before we move on, was this, your
19 attempt to open Trans World by sending in all your
20 documentation to New York compliance and legal, was that
21 while your accounts with Portfelter and Lancaster were still
22 open or not?

23 A No. Closed. I'm almost sure --

24 Q So this is after you closed Portfelter?

25 A This is after I closed them because I told them

1 about all the accounts that I had had there. I said, "This
2 is what I have had: Lancaster" -- I mean, I listed every
3 single one there.

4 Q Okay. And when you said -- you started out saying,
5 "This is what I want to do. I want to open up just one
6 account." Who were you saying this to?

7 A I said it to Josephine Linden, I think, and to
8 Howard Lipper.

9 Q Was Anthony Scaramucci involved at this point with
10 your attempt with Trans World?

11 A I think he had called Josephine Linden on my
12 behalf.

13 Q With respect to Trans World?

14 A With respect to Trans World.

15 Q So how did -- start back with how Anthony
16 Scaramucci was involved after you closed down Portfelter.

17 A Well, I told him that I couldn't stand Barry
18 Snyder. I said, "Why did you refer me to this guy?" I said,
19 "Are you good friends with him?" Because I hadn't talked to
20 Anthony in a few years, I think.

21 And then Anthony said, "Why? What's the matter?"
22 And I told him what was happening. And he was like, "Well,
23 to tell you the truth, he's beaten up my brother" -- you
24 know, not beat him up but --

25 Q But doing similar things in his brother's account

Fidelity

Goldman Sachs

Aftermarket Report for:

17

Date: 7/26/1999

[Print]

Issues	Date	Indication	Allocation	Diluted To GS	Sales Credit To GS	Offer Price	Last Close	10% First Trade	10% To Date	GS - First 2 Weeks		GS - First 60 Days	
										Total Buys	Total Sells	Total Buys	Total Sells
EMERAGE TECHNOLOGIES, INC.	07/15/99	600,000	200,000	30%	\$63,000	\$13.00	\$31.00	\$3,600,000	\$3,600,000	370,000	63,700	370,000	63,400
ISCO SOFTWARE INC.	07/15/99	730,000	230,000	40%	\$62,212	\$13.00	\$28.73	\$4,250,000	\$3,281,350	455,800	30,000	455,800	30,000
NETWORK PLUS CORP.	07/15/99	800,000	400,000	50%	\$160,800	\$18.00	\$20.38	\$4,000,000	\$1,730,000	0	292,000	0	292,000
ELI DAN	07/15/99	330,000	120,000	32%	\$21,128	\$14.00	\$34.00	\$720,000	\$4,800,000	449,200	70,000	449,200	29,000
JUMPER NETWORKS, INC.	07/15/99	480,000	150,000	40%	\$85,050	\$24.00	\$185.38	\$10,650,000	\$16,781,250	50,000	137,500	50,000	137,500
COINSTAR	07/15/99	50,000	30,000	60%	\$23,023	\$24.38	\$27.88	\$22,135	\$275,000	0	0	0	0
VIAVI CORPORATION	07/15/99	300,000	120,000	60%	\$43,920	\$16.00	\$33.12	\$1,410,000	\$2,397,000	0	0	0	0
ASIN EXPLORATION, INC.	07/15/99	400,000	400,000	60%	\$132,000	\$18.50	\$19.38	\$50,000	\$1,150,000	0	0	0	0
CANADIAN NATIONAL - COMMON	07/15/99	1,317,000	600,000	35%	\$495,000	\$62.36	\$67.62	\$202,300	\$3,037,300	824,000	0	824,000	0
CANADIAN NATIONAL - CVT QUIES	07/15/99	300,000	330,000	30%	\$159,360	\$50.00	\$54.61	\$700,000	\$1,618,750	0	0	0	0
SLACRAM CO. ACES USS ONLY	07/15/99	1,492,000	1,492,000	33%	\$738,340	\$30.12	\$36.19	50	\$93,996	0	0	0	0
REACHAM COMPANY (CS) USS USA	07/15/99	70,000	70,000	0%	50	\$50.12	\$51.23	(\$4,373)	\$78,750	3,700	0	44,600	340,800
AMDOCS LIMITED COMMON	07/15/99	1,675,000	1,675,000	60%	\$408,500	\$22.44	\$22.94	50	\$837,300	0	0	10,000	0
AMDOCS LIMITED TRACES	07/15/99	90,000	90,000	63%	\$23,243	\$22.44	\$22.30	50	\$3,625	0	0	0	0
SPACEWEB TECHNOLOGIES LTD.	07/15/99	\$30,000	\$30,000	36%	\$43,333	\$12.00	\$20.38	\$2,000,000	\$4,743,750	123,000	201,300	200,000	201,300
INTEC TECHNOLOGIES	07/15/99	375,000	234,000	40%	\$63,000	\$16.00	\$23.62	\$734,375	\$2,066,250	38,200	14,000	38,200	14,000
POGOT PRODUCTIONS COMPANY POGO III	07/15/99	220,000	220,000	60%	\$118,755	\$50.00	\$51.19	\$275,000	\$261,360	0	0	0	0
STAINES AND NOBLE.COM INC.	07/15/99	2,500,000	1,100,000	60%	\$390,000	\$18.00	\$19.81	\$7,000,000	\$1,812,500	0	802,000	0	802,000
STARMEDIA NETWORK, INC.	07/15/99	800,000	250,000	40%	\$73,039	\$13.00	\$44.62	\$2,331,750	\$7,406,350	0	181,000	0	181,000
YENFOLD CORPORATION	07/15/99	470,000	140,000	40%	\$39,200	\$17.00	\$20.38	\$1,720,000	\$1,807,500	0	177,000	0	177,000
EFOS INC.	07/15/99	800,000	200,000	30%	\$57,312	\$20.00	\$27.12	\$11,600,000	\$3,425,000	0	181,000	0	181,000
ELIPS TECHNOLOGIES, INC.	07/15/99	1,100,000	800,000	35%	\$396,000	\$34.50	\$41.24	\$340,000	\$3,450,000	410,000	0	557,000	0
APACHE CORPORATION - ACES	07/15/99	2,000,000	850,000	100%	\$474,300	\$11.00	\$35.54	\$1,275,000	\$4,193,300	0	0	0	0
APACHE CORPORATION - COMMON ST	07/15/99	4,118,000	1,000,000	90%	\$2,029,433	\$31.00	\$38.44	\$3,000,000	\$22,312,500	20,600	0	20,600	0
INTERSTREET.COM, INC.	07/15/99	550,000	150,000	35%	\$33,325	\$19.00	\$30.00	\$6,300,000	\$1,630,000	0	136,300	0	136,300
PORTAL SOFTWARE, INC.	07/15/99	400,000	150,000	30%	\$20,700	\$14.00	\$42.00	\$3,300,000	\$4,200,000	0	110,000	0	110,000
HOUGHTON COMMUNICATIONS GROUP	07/15/99	1,300,000	450,000	60%	\$270,000	\$24.00	\$31.00	\$3,200,230	\$3,178,125	265,000	39,400	412,500	64,400
QUEBECAN PACIFIC GROUP, INC. (THE)	07/15/99	6,000,000	2,000,000	60%	\$1,670,000	\$55.00	\$64.00	\$40,000,000	\$22,125,000	0	1,403,000	0	1,403,000
ELAY, INC.	07/15/99	690,000	140,000	28%	\$198,175	\$170.00	\$107.81	\$3,191,250	\$342,909,375	0	10,000	30,000	175,320

CS 134068

Confidential Treatment
Requested by

Goldman Sachs

Aftermarket Report for:

Date: 7/26/1999

[Print]

Issues	Date	Initiation	Allocation	Directed To GS	Sales Credit To GS	Offer Price	Last Close	P/L P/L P/L	P/L P/L P/L	P/L P/L P/L	GS - First 2 Weeks	GS - First 60 Days
ENCLAVE TECHNOLOGIES, INC.	07/19/99	600,000	200,000	30%	\$62,000	\$15.00	\$11.00	\$1,000,000	\$1,000,000	\$1,000,000	370,000	63,400
INTECO SOFTWARE INC.	07/13/99	730,000	230,000	40%	\$82,274	\$15.00	\$28.72	\$4,230,000	\$3,281,250	\$3,281,250	455,800	455,800
NETWORK PLUS CORP.	06/27/99	880,000	400,000	60%	\$126,800	\$16.00	\$20.38	\$4,000,000	\$1,750,000	\$1,750,000	0	292,000
NETCO	06/28/99	330,000	120,000	33%	\$21,720	\$12.00	\$34.00	\$128,000	\$4,880,000	\$4,880,000	449,100	29,000
SUMMIT NETWORKS, INC.	06/22/99	400,000	130,000	40%	\$85,050	\$34.00	\$145.88	\$10,050,000	\$16,781,250	\$16,781,250	311,000	137,500
COMSTAR	06/21/99	30,000	30,000	65%	\$25,023	\$22.38	\$22.38	\$22,123	\$22,123	\$22,123	0	0
PLANT CORPORATION	06/11/99	300,000	120,000	60%	\$43,920	\$16.00	\$35.12	\$1,410,000	\$2,297,000	\$2,297,000	0	39,100
BASIN EXPLORATION, INC.	06/17/99	404,000	400,000	60%	\$132,000	\$16.30	\$19.38	\$30,000	\$1,130,000	\$1,130,000	0	7,100
CANADIAN NATIONAL COMMON	06/17/99	1,517,000	600,000	55%	\$497,000	\$62.36	\$87.62	\$222,305	\$1,037,500	\$1,037,500	624,000	0
CANADIAN NATIONAL CVT QUIDS	06/17/99	320,000	330,000	30%	\$137,500	\$30.00	\$34.62	\$100,000	\$1,018,500	\$1,018,500	0	0
SECURAM CO. ACCESS ONLY	06/15/99	1,492,000	1,491,000	55%	\$758,340	\$30.12	\$30.19	30	\$93,998	\$93,998	0	0
SECURAM COMPANY (CS) ONLY	06/15/99	70,000	70,000	0%	30	\$30.12	\$31.23	(\$4,373)	\$78,750	\$78,750	1,700	44,600
AMDOCS LIMITED COMMON	06/07/99	1,675,000	1,675,000	60%	\$198,300	\$22.18	\$22.98	30	\$837,500	\$837,500	0	10,000
AMDOCS LIMITED TRACES	06/07/99	90,000	90,000	61%	\$11,247	\$22.34	\$22.30	30	\$5,623	\$5,623	0	0
BLACKWELL TECHNOLOGIES LTD.	06/07/99	330,000	230,000	30%	\$85,333	\$12.00	\$29.38	\$2,000,000	\$4,341,750	\$4,341,750	123,000	201,300
INAT TECHNOLOGIES	05/20/99	\$75,000	\$30,000	40%	\$65,000	\$16.00	\$25.62	\$734,373	\$2,406,250	\$2,406,250	38,200	18,900
IPRO PRODUCTIONS COMPANY/CO	05/20/99	220,000	220,000	60%	\$118,735	\$30.00	\$31.10	\$215,000	\$201,360	\$201,360	0	0
ITALIANESARONITEL.COM INC.	05/23/99	2,500,000	1,000,000	60%	\$390,000	\$18.00	\$19.81	\$1,000,000	\$1,812,500	\$1,812,500	0	302,000
SPACEMEDIA NETWORK, INC.	05/25/99	800,000	230,000	40%	\$73,059	\$15.00	\$44.62	\$2,531,250	\$7,406,250	\$7,406,250	0	181,000
TENFOLD CORPORATION	05/20/99	470,000	140,000	40%	\$39,200	\$17.00	\$29.88	\$1,120,000	\$1,201,500	\$1,201,500	0	111,000
ETOSYS INC.	05/19/99	800,000	300,000	30%	\$57,372	\$20.00	\$37.12	\$11,600,000	\$3,225,000	\$3,225,000	0	181,900
INUS TECHNOLOGIES, INC.	05/12/99	1,100,000	800,000	55%	\$394,000	\$34.50	\$41.31	\$500,000	\$3,430,000	\$3,430,000	410,000	337,500
APACIFIC CORPORATION ACES	05/12/99	2,000,000	650,000	100%	\$474,300	\$31.00	\$35.94	\$1,275,000	\$4,197,500	\$4,197,500	0	0
APACIFIC CORPORATION COMMON ST	05/12/99	4,118,000	3,000,000	90%	\$2,029,125	\$31.00	\$38.44	\$3,000,000	\$22,312,500	\$22,312,500	20,000	20,000
INTERWEB, INC.	05/10/99	350,000	150,000	43%	\$33,325	\$19.00	\$30.00	\$6,300,000	\$1,630,000	\$1,630,000	0	130,300
PORTAL SOFTWARE, INC.	05/03/99	400,000	130,000	30%	\$29,700	\$14.00	\$42.00	\$3,300,000	\$4,200,000	\$4,200,000	0	116,000
NOVUMPOINT COMMUNICATIONS	05/03/99	1,300,000	450,000	60%	\$270,000	\$24.00	\$31.06	\$3,200,250	\$3,174,125	\$3,174,125	265,000	39,400
GOLDMAN SACHS GROUP, INC. (THE	05/01/99	6,000,000	2,000,000	60%	\$1,670,000	\$55.00	\$64.00	\$46,000,000	\$32,135,000	\$32,135,000	0	1,405,000
ETAY, INC.	04/12/99	1,011,000	670,000	28%	\$698,170	\$176.00	\$107.81	\$3,191,250	\$302,009,373	\$302,009,373	0	10,000

CS 134068

AMPSHINE ENTERPRISES, INC.	04/01/1997	250,000	250,000	100%	\$250,000	\$100,000	\$44.12	\$300,000	(\$13,268,150)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Putnam

Goldman Sachs

Aftermarket Report for:
12

Date: 7/26/1997

Issues	Date	Indication	Allocation	Directed To GS	Sales Credit To GS	Offer Price	Last Close	First Trade	First Trade	First Trade	GS - First 2 Weeks	GS - First 60 Days
											Total Buys	Total Buys
STANDARD MOTOR PRODUCTS, INC.	07/10/97	2,000	5,000	64%	\$39,331	\$100.00	\$100.75	\$8,750	\$3,750	0	0	0
BRIDGEM TECHNOLOGIES, INC.	07/11/97	600,000	100,000	50%	\$31,300	\$15.00	\$15.00	\$1,500,000	\$1,500,000	0	0	0
CONVERGENT COMMUNICATIONS, INC.	07/10/97	800,000	100,000	75%	\$47,750	\$15.00	\$15.00	\$900,000	\$400,750	0	0	0
STAPLES, INC.	07/13/97	10,054,400	2,000,000	50%	\$330,000	\$29.38	\$29.12	\$1,025,000	\$1,500,000	2,371,900	0	0
CLINTON LIFE INSURANCE COMPANY	07/14/97	1,038,374	450,000	38%	\$61,745	\$15.33	\$15.33	N/A	\$675,640	0	0	0
TRICO SOFTWARE INC.	07/13/97	730,000	100,000	30%	\$31,300	\$15.00	\$15.12	\$1,700,000	\$1,313,300	0	0	0
NETWORK PLUS CORP.	06/29/97	800,000	150,000	60%	\$80,300	\$10.00	\$10.38	\$1,500,000	\$650,350	0	0	0
IL-LOAN	06/28/97	320,000	20,000	40%	\$17,300	\$14.00	\$14.00	\$360,000	\$2,400,000	60,000	41,013	150,110
JUNIPER NETWORKS, INC.	06/24/97	480,000	75,000	45%	\$47,750	\$14.00	\$14.44	\$3,325,000	\$4,300,000	70,500	23,219	70,300
COMSTAR	06/23/97	146,700	146,100	43%	\$73,125	\$22.38	\$22.88	\$64,649	\$805,350	0	0	0
VIANT CORPORATION	06/17/97	300,000	60,000	34%	\$19,704	\$12.00	\$12.12	\$900,000	\$1,147,300	162,800	0	335,880
INGAL NETWORKS, INC.	06/17/97	1,400,000	250,000	34%	\$357,000	\$38.00	\$38.00	\$320,125	\$24,000,000	444,818	0	444,818
CANADIAN NATIONAL CVT QUIDS	06/17/97	200,000	30,000	30%	\$23,300	\$30.00	\$34.82	\$160,000	\$231,250	0	0	0
READRAM CO. ACES US ONLY	06/13/97	150,000	150,000	55%	\$74,250	\$30.12	\$30.19	50	\$9,250	0	0	0
AMDOCS LIMITED COMMON	06/07/97	2,000,000	1,750,000	60%	\$223,000	\$22.44	\$22.94	30	\$875,000	1,892,400	0	1,892,400
BLACKWEB TECHNOLOGIES LTD.	06/07/97	350,000	125,000	42%	\$26,437	\$12.00	\$12.58	\$1,000,000	\$2,191,875	381,100	3,923	381,100
POBOPRODUCING COMPANY/POBOP	05/12/97	300,000	75,000	65%	\$41,875	\$30.00	\$31.19	\$91,750	\$89,100	0	0	0
HARMESADON DOUBLE.COM INC.	05/12/97	2,500,000	200,000	60%	\$78,000	\$18.00	\$19.31	\$1,800,000	\$368,300	0	201,700	201,700
STAMPEDIA NETWORK, INC.	05/12/97	700,000	125,000	40%	\$36,750	\$15.00	\$14.62	\$1,285,025	\$1,705,125	383,713	10,600	383,713
TEMPLOD CORPORATION	05/10/97	470,000	30,000	30%	\$17,500	\$17.00	\$19.58	\$400,000	\$645,750	0	50,000	50,000
TEFOYS INC.	05/10/97	820,000	100,000	40%	\$32,000	\$20.00	\$20.12	\$3,800,000	\$1,712,300	0	8,705	8,705
ESTEE LAUDER COMPANIES INC.	05/10/97	1,112,300	700,000	30%	\$23,000	\$22.75	\$20.94	\$950,000	\$29,705,750	78,780	100	140,240
ALACME CORPORATION ACES	05/12/97	600,000	250,000	100%	\$139,500	\$31.00	\$35.94	\$375,000	\$1,254,300	0	0	0
THIRSTREET.COM, INC.	05/10/97	350,000	75,000	30%	\$29,025	\$19.00	\$20.00	\$1,150,000	\$825,000	0	26,515	26,515
PONTAL SOFTWARE, INC.	05/05/97	400,000	75,000	45%	\$18,362	\$14.00	\$12.00	\$1,650,000	\$2,100,000	0	77,500	77,500
PORTPOINT COMMUNICATIONS GROUP	05/05/97	1,500,000	225,000	20%	\$135,000	\$24.00	\$11.00	\$1,605,125	\$1,389,000	0	1,610	1,610
GOLDMAN SACHS GROUP, INC. (THE	05/05/97	6,000,000	1,000,000	60%	\$810,000	\$23.00	\$24.00	\$23,000,000	\$11,062,500	2,400	975,000	2,400
INTERQUEST INC.	04/27/97	800,000	800,000	65%	\$423,280	\$33.02	\$32.78	50	\$7,325,000	243,120	0	243,120
ELAY, INC.	04/27/97	112,000	115,000	35%	\$143,092	\$170.00	\$101.33	\$531,875	\$7,151,363	0	0	15,000
TRIMINC FINANCIAL CORPORATION	04/12/97	120,000	90,000	65%	\$174,330	\$105.00	\$70.00	\$630,000	\$6,750,000	65,994	0	65,994
XINNET INC.	03/30/97	1,000,000	150,000	30%	\$47,000	\$19.00	\$21.50	\$2,512,500	\$175,000	0	11,200	11,200

Case Number: 123456789

01/01/99	175,000	50,000	50%	\$17,500	\$31.38	\$36.00	\$53,840	(\$169,040)	0	3,300	0	3,300
03/11/99	360,000	50,000	43%	\$17,500	\$34.00	\$49.25	\$3,391,750	\$1,262,700	0	0	0	0
03/10/99	1,680,000	100,000	48%	\$307,200	\$59.00	\$24.25	\$166,000	(\$17,960,000)	210,500	0	982,000	0
07/23/99	220,000	40,000	50%	\$11,000	\$31.00	\$38.38	\$1,370,000	\$495,000	17,300	1,100	131,818	7,320
07/11/99	40,300	10,300	100%	\$64,403	\$30.30	\$96.66	50	\$444,000	0	0	0	0
07/11/99	830,000	230,000	55%	\$171,337	\$30.78	\$60.00	\$3,403,262	\$5,808,782	0	218,200	0	218,200
07/03/99	704,000	475,000	43%	\$247,807	\$42.30	\$22.30	\$237,500	(\$10,995,000)	0	0	0	0
07/11/99	1,357,100	4,710,800	50%	\$1,357,100	\$53.00	\$55.00	\$2,353,403	\$1,238,681	1,059,900	10,000	1,497,900	343,300
12/01/98	300,000	80,000	35%	\$15,000	\$12.00	\$41.25	\$1,230,000	\$2,140,000	0	40,700	0	40,700
11/24/98	3,300,000	2,300,000	40%	\$900,000	\$23.88	\$22.30	\$372,300	(\$3,437,300)	0	0	93,039	0
11/23/98	202,300	125,000	70%	\$61,230	\$40.00	\$39.88	\$343,750	(\$13,675)	0	0	0	0
11/23/98	1,315,000	1,000,000	64%	\$793,200	\$75.36	\$59.50	\$2,123,000	(\$33,037,300)	200,000	6,300	306,200	6,300
11/16/98	800,000	200,000	60%	\$160,000	\$20.30	\$11.38	\$1,100,000	\$1,375,000	0	97,433	0	97,433
10/06/98	6,800	6,800	80%	\$21,707	\$103.76	\$164.00	\$83,010	\$409,610	0	4,800	33,850	6,800
09/23/98	330,000	50,000	50%	\$17,500	\$18.00	\$101.81	\$1,715,000	\$4,400,025	0	50,000	0	50,000
09/11/98	637,400	435,400	43%	\$321,309	\$46.73	\$72.23	30	\$9,448,780	0	0	179,400	0
08/17/98	700,000	200,000	65%	\$35,000	\$12.00	\$11.38	\$1,225,000	\$3,075,000	1,134,490	23,000	1,746,643	23,000
08/10/98	475,000	75,000	43%	\$115,625	\$17.00	\$101.91	\$1,200,000	\$6,812,048	0	75,000	0	75,000
07/11/98	300,000	50,000	60%	\$15,000	\$11.00	\$33.38	\$243,750	\$1,118,750	0	34,023	0	34,023
07/11/98	13,000,000	6,000,000	100%	\$10,000,000	\$60.95	\$1.83	N/A	\$3,257,758	0	1,925,967	10,000	1,925,967
06/23/98	2,000,000	2,000,000	43%	\$268,790	\$25.30	\$16.00	50	(\$17,171,330)	0	0	2,277	0
06/23/98	5,300	5,300	78%	\$4,313	\$35.00	\$29.00	\$1,725	(\$31,800)	0	0	0	0
06/18/98	330,000	60,000	50%	\$25,700	\$19.00	\$12.00	\$367,300	(\$416,330)	0	60,000	0	60,000
06/11/98	7,000	1,000	50%	\$10,500	\$100.00	\$64.00	\$1,250	(\$30,000)	0	1,000	0	1,000
06/11/98	9,400,000	3,600,000	45%	\$447,428	\$12.24	\$11.04	\$5,213,264	(\$6,649,734)	2,701,038	0	3,094,538	3,100
06/09/98	220,000	35,000	43%	\$11,025	\$18.00	\$112.38	\$446,250	\$3,301,725	0	35,000	0	35,000
06/09/98	180,000	190,000	28%	\$5,168	\$6.90	\$9.30	\$20,884	\$421,966	0	0	0	0
06/09/98	1,309,300	600,000	53%	\$341,100	\$60.88	\$30.94	\$75,000	(\$3,962,500)	1,014,400	0	1,032,200	0
05/14/98	350,000	45,000	78%	\$24,500	\$19.00	\$19.00	\$208,175	\$45,000	0	40,000	0	40,000
05/11/98	10,264,300	1,300,000	65%	\$691,250	\$28.75	\$49.12	\$375,000	(\$12,417,500)	2,176,000	0	3,057,600	0
05/11/98	400,000	75,000	40%	\$19,181	\$14.00	\$4.38	\$356,250	(\$707,875)	1,244,000	0	1,470,900	500,000
04/30/98	3,300,000	650,000	46%	\$342,100	\$27.00	\$26.00	\$2,081,250	(\$201,125)	0	212,800	0	334,900
04/17/98	290,000	50,000	48%	\$13,002	\$13.50	\$6.00	\$175,000	(\$103,750)	0	50,000	0	50,000
04/12/98	50,000	50,000	100%	\$900,000	\$180.00	\$65.75	\$2,500	(\$1,812,000)	0	0	0	0
04/12/98	50,000	50,000	65%	\$30,550	\$29.00	\$11.44	50	(\$878,125)	0	0	0	20,800
03/30/98	4,500,000	3,000,000	65%	\$1,700,000	\$12.50	\$19.00	\$187,500	\$1,500,000	0	0	0	0
03/26/98	540,000	60,000	70%	\$31,000	\$18.00	\$17.25	\$390,000	(\$45,000)	0	60,000	0	100,000
03/26/98	318,000	230,000	50%	\$71,043	\$32.00	\$33.00	\$39,785	(\$14,371)	1,400	0	1,400	0
03/26/98	1,148,000	1,500,000	70%	\$340	\$30.00	\$2.00	50	\$3,870,472	80,000	0	80,000	0
03/23/98	300,000	10,000	34%	\$19,332	\$22.00	\$24.25	\$640,100	\$70,000	0	0	0	0

Case Number: 123456789

ADDENDUM A:

GOLDMAN'S HISTORY OF UNDERPRICING

GOLDMAN'S PRE-E-TOYS 1999 OFFERINGS WITH FITT AS DEAL CAPTAIN

<u>Name</u>	<u>IPO Date</u>	<u>IPO Price</u>	<u>Opening Price</u>	<u>Oversubscription</u>
pcOrder, Inc.	2/25/99	\$21	\$55.25	46.2X
iVillage	3/18/99	\$24	\$95.88	Oversubscription data for the iVillage IPO is not available
Portal Software Inc.	5/5/99	\$14	\$36	28.3X

GOLDMAN'S TOTAL 1999 OFFERINGS

<u>Company Name</u>	<u>Issue Date</u>	<u>Issue Price</u>	<u>First Opening</u>
pcOrder.com*	2/25/1999	\$21.00	\$55.25
The Goldman Sachs Group	5/3/1999	\$53.00	\$76.00
Northpoint Communications	5/5/1999	\$24.00	\$31.13
Portal Software	5/5/1999	\$14.00	\$36.00
TheStreet.com	5/10/1999	\$19.00	\$61.00
eToys*	5/19/1999	\$20.00	\$79.00
Tenfold Corporation *	5/20/1999	\$17.00	\$25.00
BarnesandNoble.com	5/25/1999	\$18.00	\$25.00
Starmedia Networks *	5/25/1999	\$15.00	\$25.13
Inet Technologies	5/26/1999	\$16.00	\$18.94
Backweb Technologies *	6/7/1999	\$12.00	\$20.00
Viant Corp.	6/17/1999	\$16.00	\$27.75

<u>Company Name</u>	<u>Issue Date</u>	<u>Issue Price</u>	<u>First Opening</u>
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<u>Company Name</u>	<u>Issue Date</u>	<u>Issue Price</u>	<u>First Opening</u>
Juniper Networks *	6/24/1999	\$34.00	\$105.00
E-Loan *	6/28/1999	\$14.00	\$20.00
Network Plus Corp.	6/29/1999	\$16.00	\$26.00
Tibco Software *	7/13/1999	\$15.00	\$32.00
Convergent Communications	7/19/1999	\$15.00	\$24.00
Engage Technologies	7/19/1999	\$15.00	\$28.00
Insweb Corporation *	7/22/1999	\$17.00	\$38.00
Allscripts	7/23/1999	\$16.00	\$18.50
1-800 Flowers.com	8/2/1999	\$21.00	\$21.75
Internet Initiative Japan	8/3/1999	\$23.00	\$23.75
RedHat *	8/11/1999	\$14.00	\$46.00
Active Software	8/12/1999	\$11.00	\$13.50
LookSmart Ltd. *	8/19/1999	\$12.00	\$17.50
Kana Communications *	9/21/1999	\$15.00	\$50.50
Ashford.com *	9/22/1999	\$13.00	\$18.00
Netzero Inc.	9/23/1999	\$16.00	\$24.08
Calico Commerce	10/6/1999	\$14.00	\$40.00
PlanetRx.com	10/6/1999	\$16.00	\$31.50
Allied Riser Communications	10/28/1999	\$18.00	\$19.75
PlugPower	10/28/1999	\$15.00	\$15.75
Cobalt Networks *	11/4/1999	\$22.00	\$139.00
Webvan Group *	11/4/1999	\$15.00	\$26.00
Charter Communications	11/8/1999	\$19.00	\$20.50
Alaska Communications	11/17/1999	\$14.00	\$14.75

* Ms. Fitt acted as deal captain on all deals marked with an asterisk.

ADDENDUM B:**EXAMPLES OF CROSS-TRADING BY RECIPIENTS OF ETOYS ALLOCATIONS**

Cross-trades executed by Steve Kris' Ascent Capital Corp. Account during the time period surrounding the eToys IPO:						
Date	Security	# of Shares	Buy Price	Sell Price	Total Commissions	Commission per share
5/11/99	General Electric	50,000	\$109.937	\$109.937	\$3000	\$0.06
5/17/99	The Goldman Sachs Group	20,000	\$71.00	\$71.00	\$1200	\$0.06
5/19/99	EMC Corp.	50,000	\$102.875	\$102.875	\$3000	\$0.06
5/25/99	Estee Lauder	25,000	\$94.00	\$94.00	\$1500	\$0.06
6/17/99	Pfizer	25,000	\$97.68	\$97.68	\$1500	\$0.06

Cross-Trades Executed by Christopher Rule's Capstar Holding Corp. Account during the time period surrounding the eToys IPO:						
Date	Security	# of Shares	Buy Price	Sell Price	Total Commission	Commission per share
4/9/99	Bell South Corp.	20,000	\$42.19	\$42.19	\$2000	0.10
5/20/99	Motorola Inc.	30,000	\$81.73	\$81.73	\$3000	0.10
6/11/99	Lucent	25,000	\$61.41	\$61.41	\$2500	0.10
6/21/99	Seagram Ltd.	57,000	\$50.13	\$50.13	\$5700	0.10
6/30/99	Coca-Cola Co.	25,000	\$63.13	\$63.13	\$2500	0.10

Note: According to Mr. Rule, in the month of May 1999, 70% of his trading activity was done solely for the purpose of generating commissions, pursuant to an "understanding" with his Goldman broker that he needed to generate money for Goldman in order to receive IPOs.

ADDENDUM E:

INSTITUTIONS THAT "FLIPPED" THEIR ETOYS ALLOCATIONS

<u>Institution</u>	<u>Allocation</u>	<u>Percent Flipped</u>
Fidelity	200,000	90.8%
AIM Advisors	100,000	52.2%
Alliance	100,000	100%
American Express	100,000	67.2%
Ark Asset	100,000	92.2%
Capital Research and Management Co.	100,000	30%
Janus Capital	100,000	100%
Jennison Associates	100,000	100%
JP Morgan Investment Mgmt.	100,000	0%
Miller, Anderson & Sherrerd	100,000	0%
Moore Capital Mgt.	100,000	0%
MS Asset Mgmt.	100,000	83.9%
Nicholas Applegate Cap. Mgt.	100,000	0%
Oppenheimer Mgt.	100,100	49.05%
Pequot Capital	100,000	100%
Putnam Investments	100,000	85.6%
Total Institutions	7,760,000	45%

Source: "Flip Report" compiled by the Depository Trust Corporation ("DTC").

Note 1: The true amount of flipping actually exceeds the amount shown in the Flip Report, because the DTC flip report did not capture all trades. Traders who maintained only DVP (Delivery vs.

Payment) accounts with an underwriter but held their prime brokerage accounts at certain other houses, especially Spear Leads & Co., could flip their shares "away" from the underwriter, through another brokerage house, without detection by the DTC. The trading records of Goldman show that within 30 days of the IPO, its brokerage customers had reaped over \$100 million in profits by reselling their eToys IPO allocations. If profits earned by selling "away" from Goldman were added in, the total would be far greater.

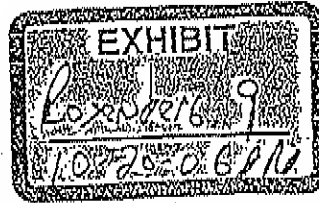
TO: Distribution

FROM: Mino Capossela
Chris Zaback
Shira Rosenberg

DATE: February 7, 2000

RE: Trade Up Analysis

MEMORANDUM



The significant appetite for Internet offerings over the past year, highlighted by offerings such as Cobalt, EToys and Juniper where 1st Tick Trade Up value exceeded \$300 million in each offering, has led to an emphasis on deal allocations. The following analysis addresses this issue and attempts to utilize metrics to analyze fiscal 1999 deal allocations and to identify those clients that have been appropriately designated, as well as those over and underserved.

The analysis covers the GS top 150 (EDOC) Institutional accounts. For each of these clients we have calculated the 1st Tick Trade Up Value for fiscal 1999 (for US Shares deals). We have also identified the corresponding Total Revenues, Non-deal Revenues and Cold Deal Purchases for each of these clients, and have applied metrics to each. From this data we were able to compile average ratios for Trade Up to Non-deal Revenues, large buyers of Cold Deals, and evaluate those customers who treated us well in the after markets.

The analysis does not encompass other information which we think would also be of interest such as market share, designations to GS in jump-ball situations or foreign deals. These are items which we know would be of use, but that are not readily accessible at this point in time. We also understand that this information would be useful beyond the top 150 accounts and at a client coverage level. This is a current focus.

We have attached 4 appendices of analysis as follows:

1. Trade Up Value Analysis of US Shares 1999 Deals - Accounts Sorted in Descending Order of Non-Deal Revenues for All Products
Analysis sorts the top 50 clients by Non-Deal Revenues and the corresponding Trade Up Value, Ratio of Trade Up to Revenues and Purchases of Cold Deals. Analysis also contains averages for each of these ratios.
2. Trade Up Value - Outliers
To highlight clients based upon our analyses that were over or underserved - based upon Trade Up ratios relative to Secondary Revenue Generation, participation in Cold Deals and aftermarket participation.
3. Trade Up Value Analysis of US Shares 1999 Deals - Accounts Sorted in Descending Order of 1st Tick Trade Up Value for All Products
Analysis sorts the top 150 clients by 1st Tick Trade Up Value and the corresponding Revenues, Ratio of Trade Up to Revenues, Cold Deal Purchases and Ratio of Non-Deal Revenues to Total Revenues.
4. Definition of Terms - Trade Up Value Analyses

GS 187422

Definition of Terms

Top 150 Clients	Top 150 EDOC clients as defined by Total Revenues
1 st Tick Trade Up Value	Calculated as (# shares purchased * (1 st Tick Price - Offer Price)). There are a number of ways and points in time in which to measure the gift that we provide to our clients in an equity offering. For purposes of this analysis, the purest methodology was
Total Revenues	Calculated as Fiscal 1999 Total Gross Revenues + GSS Revenues. While measuring our clients business in terms of Total Revenues is critical in evaluating overall client profitability, for purposes of Trade Up, the more relevant measure of a good client vs.
Non-Deal Revenues	Calculated as Fiscal 1999 Total Secondary Gross Credits + GSS Revenues. This equation does not include Primary Gross Credits and is a better measure of how good a client actually is.
Ratio of Trade Up / Non Deal Revenues	Measures the relative gift from trade up vs. the revenues earned from our clients in the after markets and from GSS. In essence, this ratio demonstrates the incremental benefit that we provide to our clients for each commission or GSS dollar that is direct
Cold Deal Purchases	Total purchases (# shares * offer price) of US Shares cold deals in 1999. For purposes of the analysis, "Cold Deals" were defined as any offering which traded-up less than 5% on 1 st Tick. There are, of course, many other ways in which to characterize a d
Cold Deals as a % of Total Purchases	Measures the volume of purchases for cold deals relative to total purchases for equity offerings. This is an excellent measure for determining clients that helped us out on hard to sell deals.
Non-Deal Revenues / Total Revenues	Measures the percentage of secondary revenues compared to overall revenues - indicating clients' treatment of GS for non-deal transactions.

GS 034265

Q1 Updated Analysis	<ul style="list-style-type: none">➤ Mark Valentine will begin European data updates for Q1 over the next couple of days➤ Requesting Technology to provide US deal data so that we can price and select the deals that fit our continuum.➤ Jenny Finney has been contacted to research Asian deal data	<ul style="list-style-type: none">➤ Once this data is obtained it should flush easily into the other components of our Cube. This will remain manual process for now until an automated feed can be developed to sort out the proper deals and correctly identify them.
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January 11, 2013

Via Federal Express

Susan Dautel, Esq.,
New York State Court of Appeals,
20 Eagle Street,
Albany, New York 12207.

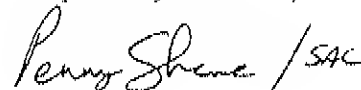
Re: *EBC I, Inc. v. Goldman Sachs & Co.*
(Supreme Court, New York County Index No. 601805/02)

Dear Ms. Dautel:

We represent Defendant-Appellee Goldman, Sachs & Co. in the above-captioned matter. As you requested from my colleague Rudy Kleysteuber, enclosed herewith are additional documents related to the sealing of documents in this matter. The first is a July 24, 2007 Order signed by Honorable Karla Moskowitz, ordering the sealing of documents in this case, many of which are reproduced throughout the Appendix submitted by Plaintiff-Appellant in lieu of a record on appeal. The second is a March 4, 2010 Order signed by Judicial Hearing Officer John Bradley ordering the sealing of documents related to the Under Seal Declaration of Penny Shane in Support of Goldman Sachs' Motion in Limine (found at pages A4891 *et seq.* of the Appendix).

Please let us know if the Court requires any further information.

Respectfully submitted,


Penny Shane

Susan Dautel, Esq.

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(Enclosures)

cc: John Reichman, Esq. (by e-mail)
William B. Wachtel ,
Wachtel Masyr & Missry, LLP
Stanley M. Grossman
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Murielle J. Steven Walsh
Marie L. Oliver
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Counsel for Plaintiff-Appellant EBC I, Inc.